IRVIN B. NATHAN, ESQUIRE

Oral History Project
The Historical Society of the District of Columbia Circuit
IRVIN B. NATHAN, ESQUIRE

Interviews conducted by Sheldon Krantz, Esquire
January 9 and 30, July 20 and September 15, 2016
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NOTE

The following pages record interviews conducted on the dates indicated. The interviews were recorded digitally or on cassette tape, and the interviewee and the interviewer have been afforded an opportunity to review and edit the transcript.

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PREFACE

The goal of the Oral History Project of the Historical Society of the District of Columbia Circuit is to preserve the recollections of the judges of the Courts of the District of Columbia Circuit and lawyers, court staff, and others who played important roles in the history of the Circuit. The Project began in 1991. Oral history interviews are conducted by volunteer attorneys who are trained by the Society. Before donating the oral history to the Society, both the subject of the history and the interviewer have had an opportunity to review and edit the transcripts.


With the permission of the person being interviewed, oral histories are also available on the Internet through the Society's Web site, www.dcchs.org. Audio recordings of most interviews, as well as electronic versions of the transcripts, are in the custody of the Society.
Historical Society of the District of Columbia Circuit

Oral History Agreement of Irvin B. Nathan

1. In consideration of the recording and preservation of my oral history memoir by the Historical Society of the District of Columbia Circuit, Washington, D.C., and its employees and agents (hereinafter, "the Society"), I, Irvin B. Nathan, do hereby grant and convey to the Society and its successors and assigns all of my rights, title, and interest in the voice recordings (digital recordings, cassette tapes) and transcripts of my interviews as described in Schedule A hereto, including literary rights and copyrights. All copies of the voice recordings (digital recordings, cassette tapes) and transcripts are subject to the same restrictions herein provided.

2. I understand that the Society may duplicate, edit, or publish in any form or format, including publication on the Internet, and permit the use of said voice recordings (digital recordings, cassette tapes) and transcripts in any manner that the Society considers appropriate, and I waive any claims I may have or acquire to any royalties from such use.

3. I reserve for myself and to the executor of my estate only the non-exclusive right to use the voice recordings (digital recordings, cassette tapes) and transcripts and their content as a resource for any book, pamphlet, article or other writing of which I or my executor may be the author or co-author.

[Signature]
Irvin B. Nathan
Date

SWORN TO AND SUBSCRIBED before me this 24th day of January, 2017.

[Signature]
Notary Public

My Commission expires: 03.31.2019


[Signature]
Stephen J. Pollak
**Schedule A**

Digital voice recordings of interviews 2 (Part II), 3, and 4 and transcripts of interviews 1, 2 (Parts I and II), 3, and 4, resulting from four interviews of Irvin B. Nathan conducted on the following dates:

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The Historical Society of the District of Columbia Circuit

Oral History Agreement of Sheldon Krantz

1. Having agreed to conduct an oral history interview with Irvin B. Nathan for the Historical Society of the District of Columbia Circuit, Washington, D.C., and its employees and agents (hereinafter "the Society"), I, Sheldon Krantz, do hereby grant and convey to the Society and its successors and assigns all of my rights, title, and interest in the voice recordings (digital recordings, cassette tapes) and transcripts of the interviews as described in Schedule A hereto, including literary rights and copyrights.

2. I understand that the Society may duplicate, edit, or publish in any form or format, including publication on the Internet, and permit the use of said voice recordings (digital recordings, cassette tapes) and transcripts in any manner that the Society considers appropriate, and I waive any claims I may have or acquire to any royalties from such use.

3. I agree that I will make no use of the oral history or the information contained therein until it is concluded and edited, or until I receive permission from the Society.

Sheldon Krantz                           Date

SWORN TO AND SUBSCRIBED before me this 24th day of January, 2017.

Victoria Wolf
Notary Public

My Commission expires: 9/30/2017


Stephen J. Pollak
## Schedule A

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ORAL HISTORY OF IRVIN B. NATHAN

This interview was conducted on behalf of the Oral History Project of the District of Columbia Circuit. The interviewer is Sheldon Krantz and the interviewee is Irv Nathan. The interview took place at the D.C. office of DLA Piper on Saturday, January 9, 2016. This is the first interview.

MR. KRANTZ: We anticipate that this will be the first of three interviews of Irv, and I am looking forward to participating in this. So with this background, Irv, we are going today to focus on your roots and the process of your growing up and what made you decide to enter into the legal profession, but let’s start just by talking about your roots and your background, where you were born and where you grew up.

MR. NATHAN: First of all, thank you very much Sheldon for doing this. I never thought of myself as being involved in a historical project before but it’s very flattering. And as you can see, I did not grow up very high, but I did grow up as far as I did in Baltimore, Maryland. I was born in 1943, and we lived in a lower middle class neighborhood in Baltimore City.

I went to public schools there. My parents were first generation Americans. Each of their parents had come from Eastern Europe, either at the end of the 19th century or by the first quarter of the 20th century. The native language of my grandparents was Yiddish. I never met my maternal grandparents. They died when my mother was actually a teenager so my mother was an orphan and fended for herself. She was a very intelligent woman with a great sense of humor, but she did not have a college education. My dad was also first generation American, and he held a variety of jobs. Both of them ended up actually working for governments. My dad worked
for the city as a purchasing agent, the person to be sure the city was getting full payment for the services and products that it purchased. My mother worked for the state welfare system. But when I was very young, she did not work at all. She stayed at home and raised me and my younger sister, Marilyn.

We lived in a very Jewish neighborhood. We lived on a congested truck route, Reisterstown Road, half a block from the public school. The house, a semi-detached house that my folks rented, was about a block-and-a-half from the Hebrew school and within walking distance both of a public playground where I spent many hours, and in the other direction a public library which was a very important asset for me and for a lot of children of that era. Baltimore has a very good public library system. We also were within walking distance of a number of synagogues, one of which is where I was bar mitzvahed.

The public school, P.S. 59, was a very good school and had good teachers. They seemed very caring. Education was very important to my parents. They had not had a great deal of education. My dad, who went to the same elementary I went to and the same high school, worked when he graduated high school but went to law school at night at the University of Baltimore Law School which was then a totally private non-public school. He did graduate but never practiced law.

I would say we were poor but we didn’t really realize it. We had ample shelter and clothing and food and all the basic necessities were taken care of.
But there were no luxuries, no vacations to speak of, no fancy clothes or toys, not even a bike. We had a lot of love and a lot of encouragement to succeed, and a major part of the notion of succeeding was to get a good education. In addition to the public school I mentioned there was a Hebrew school nearby, and I actually made great use of that. It turned out to be a very significant thing in my life because in addition to getting a public school education, through Hebrew school where I was a good student, I was able to get a scholarship to a Hebrew speaking camp. Otherwise I would not have been able to go to camp.

The camp was a labor Zionist camp down near Annapolis and so from age 13 or so until 16 or 17 I was both a camper and a counselor at that camp. I think that the values that were inculcated in the camp (as well as from my parents, who were ardent New Dealers and admirers of Franklin Roosevelt) have informed my politics. I view myself as a progressive and an ardent Zionist. I don’t agree with the current Israeli government and believe in social justice. My positive view of the good that governments can do accounts for a lot of the public service that I have been lucky enough to perform since coming to D.C.

I would say that the other significant event that occurred early on maybe in the sixth or seventh grade was my interest in journalism. At the time Baltimore had a sports editor at the *Baltimore Morning Sun* papers named Jesse Linthicum who would publish letters that were sent to him about sports and I sent in a letter not long after the Orioles arrived in Baltimore. The
Orioles arrived from St. Louis in 1954. I was probably in the sixth grade or so. In one of the early years of the Orioles I wrote an article about how the team would do -- you’re not going to like this Sheldon, because I don’t think I predicted that the Red Sox would do that well that year. That letter was published in its entirety in his column, where he published a limited number of letters. To me that was a big deal and I really appreciated the process of getting my letter published and getting my name in the paper as a writer.

When I went to high school at Baltimore City College it had a very prominent school weekly newspaper, the *Collegian*, and a number of my close friends were on the Collegian. I joined the sports staff. I very much enjoyed writing for the paper. I was a reporter and then a sports editor of the paper and became the managing editor in the final year. A lot of the time in high school was spent on journalism and that paper.

The paper won a medalist prize from the Columbia Journalism School and I got to go to New York City with my buddies. It was very exciting. There I went to my first Broadway show, *The Music Man*, and we got to make a fleeting appearance on the *Today Show* with Dave Garroway. The advisor to the paper was a very significant role model to me, an English teacher, named Charles Cherubin. He was a very liberal activist and encouraged activism and gave us good guidance not only on the newspaper and journalism but also on national politics and public service.

Then finally while growing up, at the beginning of the Kennedy administration, I watched President Kennedy’s inaugural speech about doing
public service and asking what you can do for your country and I think that also made a big impression on me. I took that in and I think that had a major impact on me growing up. So that was a pretty long-winded answer but I think it gives you the essence of my youth.

MR. KRANTZ: Well I think this is an excellent start. I just want to say as an aside there are some similarities in our background because I also became interested in journalism in high school and was the editor of the sports section of our newspaper. So I am intrigued by the parallel. Tell me more about your sister Marilyn.

MR. NATHAN: I think I mentioned her briefly and we have a nice relationship. There was the usual sibling rivalry, and I am guilty of having teased her too much. We obviously went to the same schools. She is three years younger than I am and she went to that same camp that I did. She went to both public school and Hebrew school and she became a public school teacher. She went to Towson State Teacher’s College, now Towson University, and then from teaching she became a mentor for engineers at Boeing and she worked for Boeing. She is now retired and living near Lancaster, Pennsylvania, enjoying her many grandchildren.

MR. KRANTZ: Irv you had talked about the impact that the labor Zionist camp had on you with respect to your views both on Zionism and social justice. Could you talk a little bit more about that, I mean what kinds of things were really discussed at the camp?
MR. NATHAN: First of all it was a belief in helping each other. There was a communal spirit at both the camp and in the city. Apart from the camp there was an organization, named Habonim, where I spent a lot of time. I became the president of the local chapter one year -- I think my junior or senior year in high school. It was very interested in the labor union movement in being sure that workers got a fair shake. It was very interested in civil rights and civil liberties and so it participated in marches and protests. And, of course, it believed in a viable state of Israel as a homeland for the Jews. Even in our modest home, we had what was called a “pushkie” where we would put small change, and a bearded rabbi would come to our home every once in a while to collect our savings and presumably pass it on to an agency that would help Jews settle in Israel after the Second World War. A number of my contemporaries from that era made “Aliyah,” meaning that they emigrated to Israel and live in Israel now. It probably accounts in part for my recent activity. When I finished my service as Attorney General for the District of Columbia and after agreeing to go back to my law firm, Arnold & Porter, I took off a few months last year to teach at Hebrew University and my wife and I lived in Israel for the first time. I had visited several times before, and I think the affection for that country and the hope that it survives and prospers, stem from those days.

MR. KRANTZ: You mention one role model growing up when you were involved in the high school newspaper. Do you want to mention some other role models, some
people that had an impact, either people you knew or just people you
respected or authors of books that you were quite taken with?

MR. NATHAN: Well, obviously I was taken with President Kennedy. I was a teenager when
he was elected and it was a very thrilling experience but that wasn’t close up.
I would say that in addition to my parents and Charlie Cherubin, the most
significant role model for me was Judge Simon Sobeloff. I clerked for him
after law school and before starting to practice. Judge Sobeloff was a very
highly respected individual in the Baltimore community. He had an
illustrious career, in both public service and private practice. He had been the
United States Attorney in Baltimore during Prohibition, later City Solicitor in
Baltimore. He had been the Solicitor General of United States in the
Eisenhower Administration, the chief judge of the Maryland Court of
Appeals and the Chief Judge of Fourth Circuit Court of Appeals. He was
also the founder of a well-respected law firm in Baltimore that continues to
thrive today, although without his name on it. My clerkship with him was a
very significant event for me. He was always interested in social justice and
in being sure that prosecutors were fair with defendants and the defendants
got all of their rights. He believed deeply in integration, racial justice and in
public service. I think he taught his clerks the importance of that and the fact
that my fellow law clerk from that period, Judd Miner, became Corporation
Counsel for Chicago in the administration of the first black mayor of
Chicago, and I had essentially a similar job for D.C. was no coincidence.
This was basically the same job that our judge had had in Baltimore more
than half a century before us. When I held positions in the U.S. Department of Justice, I had the official portrait of Simon Sobeloff, from his days as Solicitor General, hanging in my office so when knotty problems arose, I could think what would Judge Sobeloff do under these circumstances.

MR. KRANTZ: Were there jobs you had growing up?

MR. NATHAN: I did and I guess that’s another role model that I should mention. As I mentioned, we lived in a semi-detached house. The other half of that semi-detached house was occupied by a widow who had three children - a son and two daughters. The son, Jerry Gross, who was, I would say, about 10 years older than I, was a very intelligent guy and a very good tennis player. He taught me a little bit about tennis, and we would play chess and checkers on our adjacent front porches. He became a CPA and began working in an accounting firm, Sidney London & Co. in downtown Baltimore. My father asked Jerry if there was a job I might do at the firm’s office on Saturdays and during the summer. Through Jerry, when I was about 12 or 13 years old I became employed as an office boy at the accounting firm. Part of my job there was to run the duplicating facility which involved mixing chemicals for a thermofax machine. If you put too many chemicals in, the copy came out dark and streaked and if you did not put enough in, it came out faint and illegible. It was a very sensitive operation. So I would do copying for them. The other part involved updating their CCH service. They had a tremendous back log of CCH supplements, and they wanted someone to go through them and insert the new CCH pages on tax and accounting matters and remove the
outdated ones. So I would sit in this library and pull pages out and put the replacement pages in. Sometimes I would tear out the same pages that I just put in a few minutes before as they were quite backed up.

I’ll tell you a story about that. For working a full day, this was either on Saturdays or in the summertime in my first paying job, I got $5 a day and would be paid by my next door neighbor Jerry Gross from petty cash. One day I had worked the full day and Jerry wasn’t there when the day ended. So I said to one of the young junior accountants that I wanted to get paid. They said “well how much do you get paid?” and I said “I get $5 a day.” And they said “Well that’s more than we get,” and that was the end of my job there. Later on as I mentioned, I was a counselor at the camp.

Another job I had was working as a truck driver and delivery boy for an unsuccessful spice company that my father started. His short-lived company sold spices in bulk principally for crab houses in the Baltimore area and meat packers in western Maryland. He had a converted milk truck that you had to drive while standing up and shifting gears from a long horizontal shaft that started in the floor board and came up to your waist. I drove that truck through the congested streets of Baltimore and delivered 100 pound sacks of seafood seasoning to retail establishments. This experience taught me that I wanted to go into a profession and not be a manual laborer. Going forward from the teenage years, I went to college and worked in the summers for the

*Baltimore Evening Sun.*
MR. KRANTZ: Before you get to college I want to ask you another question about the teenage years. You indicated that you grew up in a Jewish neighborhood. Did you come across any anti-Semitism growing up?

MR. NATHAN: No. And that was one of the lessons that the advisor to the newspaper, Charlie Cherubin, that I mentioned, taught us. He made clear that we had grown up in a bubble, that most of our neighbors were Jewish, and we were shielded from the prejudices of the outside world. On the Jewish high holidays, the public schools in our neighborhood either closed or maybe two people showed up, so we never missed any time from school because of taking off for the Jewish holidays. He said basically we were living in a cocoon, cosseted by our parents, and protected from anti-Semitic thoughts or comments. We never really realized what was out there in the rest of the world, did not realize that until I went off to college, and there were Jewish and non-Jewish fraternities, which would not even consider allowing a Jew to pledge.

MR. KRANTZ: Okay. Now let’s turn to what you started to talk about, which is after you graduated high school your next steps up in terms of both undergraduate work and the decision to go to law school.

MR. NATHAN: Well, I graduated high school in 1960. I had gone to an accelerated junior high program. During junior high school, we did three years in two and I went through high school in three years and so I was 16 when I graduated from high school in 1960 on the verge of turning 17. I wanted to go to a good school but again finances were a considerable factor. So it was
determined that the best place for me to go was to Johns Hopkins in my home town of Baltimore where I could live at home. I lived at home as did a number of other students in Baltimore in those days. We were known as “townies.” Of course there were a greater number of students from out of the city. One of those was a fellow named Michael Bloomberg, who has since donated more than a billion dollars to the school. I majored in history at Hopkins and once again I focused on journalism at Hopkins. It was not an academic subject. I was on the newspaper, *The Newsletter*, and again started as a sports reporter, then was the editor of the sports pages and then became the co-editor in chief of the Hopkins paper. Again, it was a weekly and it was a very good paper. Among my predecessors as editors in chief were Russell Baker and Alger Hiss. In addition, I got into broadcasting. The college had a very good radio station, WJHU, and I did the play-by-play broadcasting on the radio of both football and lacrosse. I am one of the few play-by-play lacrosse announcers in the world. I also had a talk radio show, a call in sports show at WJHU for a couple of years. I believe that experience was important in my career. I think that journalism is very good training for the law because it taught you to both write and speak well, to write leads that were informative and to make your main points early then to flesh out the story with details in a descending order of importance. In doing oral reports on sports, again it was important to communicate well with your audience and get to the important points, make your points coherently and make your presentations in a coherent logical way.
I financed my years at Hopkins, with scholarships, loans and my summer earnings. Of course, I did not have to pay for room or board. And the interest rates on loans were quite modest, so I was able to pay them off shortly after I started working. In the first summer, I worked as a waiter at a resort in the Adirondacks. I got that job through a friend I met at Hopkins. In the summers of my next three years at Hopkins, -- I worked at the Baltimore Evening Sun as a sports reporter. One year, I got a fellowship from the Wall Street Journal which said that if I got a job with a recognized newspaper during the summer they would give me a stipend--I think it was about $500--and that went a long way towards paying the part of tuition that was not covered by the scholarship. They sent me the names of a number of newspapers that would hire me, but they all involved travelling and living in a different, distant city. My folks convinced me that for economic reasons, it would be best if I worked for The Baltimore Sun and could save more of both my pay check from the paper and the stipend. So I did work for the evening newspaper in Baltimore. In those days, the Sun had two papers, an evening and a morning paper. The evening paper had a sports section and they hired me to cover amateur sports. I covered little league baseball. There was a page in the sports section each week devoted to the little leagues. I had a photographer who would come with me, and we would go out to all the fields and report on the teams that were playing, including the kids and the coaches. I would ask questions, and the kids would give their answers, and I would make them intelligible and run their pictures with the story. I also covered
other amateur sports, including softball, which was a big amateur sport in the city. And then as a special treat for me every once in a while, they let me do a color story for the Colts and the Orioles. This was a big thrill. I got to meet some of the players and coaches and also some of the journalists who regularly covered the Orioles, the Colts and Bullets.

It was a very good and important experience for me, but I have to say this was before Woodward and Bernstein and others who made investigative journalism popular after that. When I saw the life of the journalist and the tedium that was part of the process, I realized that I would have more opportunities in other areas, either in academics—I gave some thought to going to graduate school in history—or in law and ultimately concluded that law was going to offer the best opportunities to do a variety of things.

MR. KRANTZ: Now, how did you reach that conclusion? That law was the field that you wanted to pursue?

MR. NATHAN: Well it was a combination of things. I had not had any interaction with lawyers in our community. But I had done a lot of reading about lawyers. One of my heroes was Clarence Darrow. I read his autobiography and books about him. I think I read the autobiography after seeing the play, Inherit the Wind, which was put on by my high school drama department in my senior year. I also read Louis Nizer’s book, My Life in Court, which described a number of cases where his lawyering skills had won for his clients. I also saw a number of television shows. When I was very young, there were shows called The Public Defender and one called Mr. District Attorney both of
which I watched. And there were other TV dramas about lawyers, including *Perry Mason* which came along in my late high school, early college years. I think I also saw when I was in college the movie *To Kill a Mockingbird* with Gregory Peck as Atticus Finch, which was very powerful. Finally, an important influence was a course I took at Hopkins in American constitutional law taught by Prof. Carl Swisher. He was not a lawyer, but a political scientist, who put the landmark Supreme Court decisions in historical and political context. From reading the assigned cases and considering the arguments in both the majority opinions and the dissents, I could discern what the lawyers had done to shape the cases. So I think all of these factors, including mostly popular literature and movies, led me to the conclusion that law might be an interesting pursuit. Even with all this, it was a close question as I graduated college, whether to go to graduate school in history or to law school. I basically chose to go to law school because it would lead to a broader array of professional opportunities.

**MR. KRANTZ:** And the possible link between that and your interest in social justice?

**MR. NATHAN:** Absolutely. I think the kind of cases that Darrow had were very inspiring and fit into my progressive agenda. Darrow of course originally was a railroad lawyer and represented monied interests. Later in his career, he represented labor unions, labor leaders and people accused of crime and those seeking to uphold their First Amendment rights. This was an important part of what intrigued me and led me to law school.
MR. KRANTZ: Before we go to the law school part of your life, there are a couple of questions that come from things that you have said earlier. One is, clearly sports were important to you as you were growing up. Why do you think that was the case both in terms of your interest in sports and maybe you can talk a little bit about your direct activity in sports?

MR. NATHAN: Like I said, we didn’t have a lot of money so we didn’t have a lot of kinds of entertainment. We didn’t go on ski trips, we didn’t belong to a country club, I didn’t play golf at the time, but I liked sports very much. I had pretty good hand/eye coordination so the sports I played were the ones you could play at the local field which was softball, basketball and touch football. My parents did not want me to play tackle football. They were afraid their little guy would hurt his head and his head would have to be the way to get ahead in society, so they put tackle football off limits. I played in the touch football league we had in junior high. I was also on the student basketball team that played the faculty at our junior high school. In fact I met a guy who is one of my closest friends now when we were 8 years old down at the softball field. He did not live in our neighborhood but he biked down to our field and we played -- it was called The Towanda Midgets -- we were the soft ball champs of that field in the 10 and under category and we played in the city championship together. As it turned out, he then went to the same junior high school with me and we were both active on the school newspaper. He and another good friend went away to college, but when they came home for Thanksgiving, we would always have a touch football game with other
friends that we called The Toilet Bowl. In later years, this morphed into a co-
ed, multigenerational game that our wives and children played in as well, followed by a deli feast at one of our parents’ homes. It was a tradition that lasted for many years.

I never was good enough to play on the high school or college teams, but I always retained my interest in sports. I guess it was first fostered by my father. He would take me to minor league baseball games in Baltimore before the Orioles came to town. After they arrived, when I was about 12, he took me to a department store to meet this 19-year old who was in his rookie season with the Orioles. It was Brooks Robinson. I got his autograph and I remember his being very kind and friendly to me and my father. Today one has to pay big bucks for an autograph of a star like Brooks Robinson. I continue my sports interest today, rooting for the Nationals, the Orioles, the Redskins and the Wizards. I never did get into ice hockey and really don’t understand that sport.

MR. KRANTZ: Where does your competitive spirit come from? I have played racquetball with you and seen when you are down in the score make determined efforts to come back and win.

MR. NATHAN: I really don’t know, but it’s been a trait all of my life. I think it stems from the need to succeed that was implanted in us by our parents so that we would have a better material life than they had. I was always egged on by father to do better. I would come home from school with a report card with 3 A’s and a B, quite proud of myself, and he would say, “how come you got a B?” And
I guess, I saw the results of trying hard. When I did pretty well in checkers with Jerry Gross, it helped get me the job I described. And when I did well in elementary school, I was invited to go to the accelerated junior high. And as mentioned, my good grades in Hebrew school got me to go to camp. So the lesson I learned early was that trying hard and winning could pay off, and it’s been part of me ever since even when it’s only a game.

MR. KRANTZ: And anybody who knows you knows that humor is a big part of your personality. Where does the humor come from?

MR. NATHAN: That I think I inherited from my parents. Both of them had very good senses of humor and were willing to laugh at themselves, at others and at the absurdity of life. Comedy on television was a big part of our family life. I remember in the late ‘40’s living in a small walk-up apartment, and even though we were poor, we had a small black and white TV. On Tuesday nights, chairs were arranged in theater fashion in front of the TV and neighbors and relatives would come over and we would watch the *Milton Berle Show*, I think it was called the *Texaco Comedy Hour*. My Dad in particular loved Milton Berle and would laugh heartily at the outlandish costumes, the sight gags and occasional interjection of Yiddish words and expressions. We also watched Sid Caesar’s *Your Show of Shows* and comedians like Myron Cohen on the *Ed Sullivan Show*. I was particularly taken with the puns and witticisms of Groucho Marx and Steve Allen.

I remember when we were very young and living on Reisterstown Road, when the television was on the first floor and our bedrooms were on the
second floor, that my sister and I would get out of our rooms and crawl very quietly on the stair landing to watch *The Tonight Show* with Steve Allen, which did not come on till 11:30, long after we were supposed to be asleep. My parents would pretend they didn’t hear us, and then after a while would shoo us back to bed. It basically was as mischievous as we got, and it got us to hear a lot of the jokes and humor.

My Dad used to tell shaggy dog stories with bad puns and we would all groan and complain, but secretly appreciated them. Even after he got dementia as part of his Parkinson’s disease near the end of his life, he would still appreciate the standard joke that we shared: The son comes into the living room where his father is watching a baseball game between the Yankees and the Orioles and asks the father, “What’s the score?” The father says, “It’s 5 to 3,” and the son asks, “Who’s winning?” And the father says “5.” This always brought a smile to my Dad’s face.

Basically, I see humor as a way of bonding with people, breaking the ice and easing tensions. I also have to admit it’s a way of getting attention, demonstrating wit, and it’s gratifying to be able to evoke laughter from others.

**MR. KRANTZ:** Ok, let’s get back to your pursuit of law. Why did you choose Columbia Law School?

**MR. NATHAN:** From Hopkins, I applied to a number of what I was told were the best law schools. I had good grades at Hopkins, was elected to Phi Beta Kappa, but did not do particularly well on the LSAT’s. I was accepted at Columbia and
received a substantial scholarship, which was very important to me. My first choice was Harvard, but I was put on the waiting list, and I did not know if I was going to be accepted and suspected that even if I were, I would not receive as generous a scholarship package. So even before hearing the final word from Harvard, I accepted the Columbia offer. I had already had a small taste of New York from my trip there for the journalism convention and I knew it would be an interesting place to spend three years. For me it was a good choice. It also saved on transportation costs. Several times a year, my parents drove me to the school from Baltimore. I did not focus on it at the time but realized in hindsight that when my parents drove me to New York, because they did not have the funds for a hotel or motel, they would drive back the same night. This was a 10-hour round trip, and since my mother did not drive at that time, my Dad drove the full way. I remain deeply grateful for their tremendous sacrifice for me and my career.

MR. KRANTZ: Did you like law school?

MR. NATHAN: Yes, I am one of the rare folks who actually enjoyed my experience. At the beginning, I was intimidated. I thought a number of the students who had gone to Ivy League colleges and were the products of prep schools had received a better education than I had and were better prepared for law school. In addition, a number of the students seemed to have fathers, uncles or grandfathers who were lawyers and they were already conversant with the lingo and issues. This, of course, only made me work harder. I diligently did the readings before the classes, and I was fortunate in the first year to live in
a wing of a dormitory that had equally diligent, conscientious students. The four of us were constantly in each other’s rooms, discussing cases, and of course, personal matters, and encouraging each other. I owe a great deal to them. They sat us alphabetically in the large first year classes and my bench mate was Gary Naftalis, who was very bright and concerned with doing well, just like I was. I would say we each inspired the other to do as well as we could. We both made the law review based on our grades. Even though I did not work as hard in the next year, my grades actually improved. Admittedly, I did not work so hard in the last year, when grades mattered a lot less. In addition to classes and law review, I was active in the Jerome Michael moot court competition. This was a trial level moot court, where you were presented with facts and statements and people playing the witnesses, and the trial was held before juries made up by undergraduate volunteers from Barnard and Columbia. I enjoyed and profited from the experience, and was proud to win the Jerome Michael trophy in my senior year. It cemented my view that I wanted to be a litigator when I graduated. I also worked in that last year for the New York Legal Aid Society. It was a way to get some pocket change and also see real legal problems up close. That, too, was a very rewarding experience.

MR. KRANTZ: What kinds of things did you do at Legal Aid?

MR. NATHAN: I was working under the direction of a number of lawyers. Most of the cases involved domestic relations, housing issues and employment matters. I met with clients, worked up statements of their concerns to pass on to the
lawyers, and did some legal research. None of the work got me into court personally, but I was fortunate to accompany some of the lawyers to preliminary matters in the New York trial courts.

MR. KRANTZ: Before we wrap up for the day, we should talk a little about your family.

MR. NATHAN: Happy to. I was married at the end of my second year of law school. My wife, Jerry, was someone I had met in Habonim in Baltimore. She became pregnant with our first child, Dan, in my third year, and Danny was born just after I started clerking for Judge Sobeloff in the summer of 1967. We were then living in Baltimore, where both our families were and they could help with childcare. Our second son, Jon, was born in 1972 when we had moved to Washington for my job at Arnold & Porter. Jerry and I were divorced in the mid-1970s. In part, I attribute that to the long hours I was putting in at the firm and the frequent travel. I give her a great deal of credit for handling the bulk of the child rearing. She did a great job, and we have two wonderful sons who are now grown and married. In the late 1970s, I met and married my much better half, Judy Walter, who has made a wonderful life for us and our family and has been the best thing that ever happened to me.

MR. KRANTZ: I can attest that she is your much better half.

MR. NATHAN: When I met her, she was a vice president at the Wells Fargo bank in San Francisco, but she had been living in D.C. for a couple of years, first as a White House Fellow and then as the assistant to the president of American University, Joe Sisco, who had been her boss at the State Department when she was a White House Fellow. Immediately after we met, she moved back
to San Francisco to resume her job with the bank. We had a transcontinental romance for a couple of years, which was aided by the fact that a number of her bank clients were in the Southeast U.S, where she had to fly on a monthly basis, and I had some cases in San Francisco.

She had gone to Berkeley for graduate school, had many friends out there and loved the city. I consider it my greatest forensic triumph to have convinced her to come east, get married and live in D.C. She worked as a senior deputy Comptroller of the Currency, then got a PhD at Catholic University in social work, and taught as an adjunct there for several years. She has developed a great network of friends in D.C. and now would never consider moving anywhere else. She has been incredibly supportive to me and a calming and maturing influence. She is a wonderful step-mother and grandmother to our two grandchildren, Ben and Zoe. They are the children of our son Dan and his wife Sue Taylor, who live in Saratoga Springs, New York. They live there because Dan is a professor of American Studies at Skidmore College. We have a second home about an hour away from them in the Berkshires, and we try to get there as much as we can to see the grandchildren. We also try to visit our son Jon and his wife Melissa who live in Manhattan as much as we can. So I guess that’s the story of my family life.

MR. KRANTZ: I think that’s a good place to break for the day. We’ll schedule a next session to talk about your legal career. I’ll be in touch soon.

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

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

MR. NATHAN: I started working at Arnold & Porter in the fall of 1968. I had finished the clerkship with Judge Sobeloff, which was, as you said, a great experience. He was a terrific mentor, and I felt confident that I would be able to do litigation after having been trained by him. Actually, when I was clerking for the judge in Baltimore, my first choice for a law firm in Washington was Williams & Connolly. I applied to both Williams & Connolly and to Arnold & Porter. At Williams & Connolly I was scheduled for an interview sometime in the winter while I clerked in Baltimore. On the day of the scheduled interview, it snowed. I took the Greyhound bus from Baltimore to Washington and got out at the Greyhound station in DC at 11th and New York Avenue. There were no cabs because of the snow so I walked to their offices which were then at Connecticut and L. When I got there, I was told that the office was closed,
that the interview was therefore cancelled and the two lawyers I was scheduled to meet had not come in that day. I then had to walk back to the Greyhound station and return by bus to Baltimore. Needless to say, I was not a happy camper. So I went to my second choice, Arnold & Porter. At the time I didn't know a lot about Washington law firms but I had read in a precursor of the Washingtonian magazine a squib on all the firms and there was a statement that Arnold & Porter had more talent and lawyers with more idiosyncrasies per square inch than any other firm in the city. I didn’t focus on the fact that the space of the firm was very small and that is why they had so many talented people per square inch. But I was hired and I thoroughly enjoyed my experiences as an associate at Arnold & Porter. It turned out to be a very lucky choice for me.

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

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

MR. KRANTZ: Thirty-five years!

MR. NATHAN: That is not all in a row. I have left several times for government service. I have come and gone so many times through the revolving door that I am quite dizzy. When I joined in ‘68 I was an associate. After the first seven years, I was elected to the partnership in 1974 or 1975. I left the firm to go into the Department of Justice in 1979. That was my first stint in government. When I was at the firm as an associate, I had some very good experiences and some great training. There were terrific lawyers at the firm, who were good mentors. They included Abe Krash, Norman Diamond and Milt Freeman.
Two other partners with whom I worked extensively were Stuart Land and Mel Spaeth, both of whom have remained friends of mine through the years. I worked on a great variety of litigation in that period. At the firm at that time, one was encouraged to be a generalist. They did not have departments or specialties and so I did a lot of litigation, as well as contract work and some Congressional lobbying. But principally it was litigation and it was some extremely interesting litigation.

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

MR. NATHAN: Well a principal case I worked on as an associate was a case where we represented a group of American steamship companies, including American Export Isbrandtsen Lines and Lykes Brothers Steamship Lines, in an antitrust case that was brought against them by the owners of Sapphire Steamship Lines. Its principal owner was Marshall Safire, who was the brother of The New York Times columnist William Safire. This was a very complex case, and from the beginning I got a lot of responsibility. It had come in to the firm through Thurmond Arnold who was still practicing at the firm at the time. Of course, he had been an antitrust assistant attorney general in the Department of Justice in the distant past and had done a lot of work in the antitrust defense world. I briefly worked for him although the main lawyer on that case, the main partner, was Stuart Land. The case involved some complex issues of antitrust law but also a lot of discovery and damage analysis. Right from the
start, I got to take a number of depositions. One of the first was the owner of Sapphire Steamship Lines, Marshall Safire. I prepared extensively for it and was eager to do it. I was particularly pleased to get praise for my efforts by Dan Margolis, a well-respected antitrust litigator, who was representing another one of the defendants. He was not at our firm. He was at a separate firm, with whom we were in a joint defense. His encouragement meant a lot to me. It was very meaningful and suggested that I could perform at a high level in litigation. In that case, I learned a lot watching other prominent lawyers in town who represented other defendants in motions and hearings before the District Court judge here in D.C.

I also got to meet, in connection with this case, Joe Alioto, who was a prominent plaintiff’s lawyer in San Francisco and at that time back in the late 1960’s and early 1970’s was the mayor of San Francisco. I had a very amusing and interesting experience with him. His firm represented the plaintiff, a trustee in bankruptcy for Sapphire Steamship Lines, and we reached a settlement with the Alioto law firm. But the settlement was not going to satisfy either the owner of the company or the principal creditor of the steamship line which was the U.S. Government. Because the company was in bankruptcy the settlement had to be approved by the Bankruptcy Court in the Southern District of New York. The lawyers who handled the case for the Alioto law firm were the very able Max Bleecher and Harold Collins. The mayor had had virtually nothing to do with the case. On the day the matter was to be argued before the Bankruptcy Judge, Mayor Alioto happened to be
in New York on some mayoral business (or he had arranged it so he would be there) and he was going to make the argument in favor of the settlement on behalf of the trustee. Since I had done the lion’s share of the work on the case and knew the details. I was assigned to go and brief Mayor Alioto about the matter.

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

It was quite a lesson in advocacy and lawyering. Alan Morrison was an Assistant U.S. Attorney and argued in opposition, and also did an excellent job. We did have to sweeten the deal a bit, but we did ultimately get that settlement approved. As a result, the firm got some other cases for Lykes
Brothers Steamship Lines and I worked again with Stuart Land on those and we prevailed in those litigations as well.

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

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

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

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

MR. NATHAN: A couple of others stand out in my mind. We represented the importers of tomatoes from Mexico and we were seeking some relief from the Department of Agriculture. We had an extensive hearing down in Florida and we got a sense of being the villain in the piece because there was a fight between the Florida tomato growers and the tomatoes that were being imported from Mexico. So we were booed when we walked into the hearing room down in Orlando and we litigated that case quite extensively. It was a case that taught me a lot because we had to deal in the court of public opinion in that matter as well as in the agency and then in getting the record developed in the Court of Appeals. Our goal was to establish that our clients could import these tomatoes and they could be sold on the same basis as the domestic tomatoes grown by the Florida growers. This was during the Nixon administration. Earl Butz was the Secretary of Agriculture and the Department was trying to skew the regulations so as to exclude and penalize tomatoes coming from Mexico to the benefit of the domestic growers.
This interview was conducted on behalf of the Oral History Project of the District
of Columbia Circuit. The interviewer is Sheldon Krantz and the interviewee is Irv Nathan. The
interview took place at the D.C. office of DLA Piper on Friday, July 8, 2016. This is a
continuation of the second interview.

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

MR. NATHAN: Thanks Sheldon. In that case, we represented the importers of tomatoes
grown in Mexico against the Department of Agriculture which was run then
by Earl Butz. This was in the Nixon administration which was trying to favor
the growers in Florida. We had an administrative hearing to challenge the
regulations that agriculture had imposed. It was important then to get public
opinion on our side as well as to develop a record for the Court of Appeals.
And there are some lessons I learned about Washington in doing this. First, of
course, we tried to round up consumer advocates to support our notion that
tomatoes grown from Mexico were at least the equal if not better than
tomatoes from Florida and we called ours vine-ripened tomatoes from
Mexico. One of the people we got involved was Bess Meyerson who was
then the consumer champion of New York City and her lawyer at the time
who was Si Lazarus and that worked out quite well. In addition, we went to
Capitol Hill and we met with Mike Pertschuk who was then counsel to the Senate Commerce Committee. We were asking that the committee hold a hearing on this issue so we could demonstrate the unfairness to our clients who were being prejudiced by the Department of Agriculture to the detriment of the American consumers. We wanted a hearing but Pertschuk had a better idea. He said to us you go back and write a memo that is marked “strictly confidential/private and confidential” from me, Mike Pertschuk, to my boss who was then the Chairman of the Commerce Committee, Senator Magnuson. And in that memo we laid out all of the inappropriate actions taken by the Department of Agriculture and the terrible effects on consumers. I thought this was going to lead to a hearing. Instead, a few days after we delivered this confidential memo, it appeared in a column by Jack Anderson who breathlessly said, “I have obtained through great investigative work a confidential and private memo,” and the column laid out all the issues. It set forth all of our arguments and it turned out to be a lot more effective than if we had a hearing. So it taught me something about the ways of Washington, including that memos were written solely to be leaked to the press. By the way, we lost of course before the Department of Agriculture, but we did prevail in the Court of Appeals on the issue and we got regulations changed.

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

MR. NATHAN: Exactly.

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

One case in particular that taught me a lot of lessons was representing an individual named Michael Harvey. Harvey was the son of an employee of one of our clients. His mother came into my office one day and said that her son, who was then living in Costa Rica, had just received a draft notice to report to the draft board in Virginia and he was not going to do that, he was not going to come back for this. He claimed to be a conscientious objector. So I spoke by phone with Michael in Costa Rica and urged him to prepare his application for conscientious objector status and worked with him to change the place of his induction from Virginia to the nearest American base which was in the Panama Canal Zone. They did transfer the place of induction, which bought us some time. Now at the time it was required if you were going to be claiming any defense of the draft, you had to exhaust your remedies and that meant you had to go to the place of induction and there refuse to take the step forward. So I explained to him to go Panama at the date of his induction, to appear there and to decline to take a step forward. So he did that and then
when he returned to Virginia he was arrested and charged with Selective Service offenses and the prosecutors moved to remove him from Virginia to Panama to stand trial for these criminal offenses. At that point, we made motions to avoid the removal principally on the ground that the judge in the Panama Canal Zone was an Article I judge whose term had expired and that meant that he was sitting at the pleasure of the President who of course was the prosecutor. So we said this is an unfair place to remove him to. We also argued that all the American residents in the Canal Zone were somehow connected to the military and thus we couldn’t get a fair trial there. The judge in federal court in Virginia agreed with us that he couldn’t be tried in the Canal Zone. So the prosecutors in Virginia dismissed the removal proceeding and promptly indicted Harvey under the statute that provided that when a person returns to the United States for a U.S. crime committed elsewhere that person could be tried in the first place that the person entered the U.S., which in this case was Virginia. So at that point we filed motions to dismiss claiming that he had to be tried in the Canal Zone because that is where the crime had taken place. We also claimed that the government had violated the Speedy Trial Act even though, of course, we had caused most of the delay.

We also relied on a statute that had been passed at that time because a lot of the young assistant U.S. Attorneys were declining to bring these cases. The conservatives in Congress passed a law providing that if there was an inordinate delay between the referral for prosecution and the filing of charges, the U.S. Attorney had to write a letter to explain to Congress the reason for
the delay. We argued that the prosecutors had not written such a letter, and we had another hearing before the Judge who was Albert Bryan, Jr. in the Eastern District of Virginia. On the basis of the failure to provide the letter, the judge dismissed that indictment and Michael Harvey has gone on to a nice productive life. The case drove home to me that with imagination and persistence, you can do pretty well in litigation and in criminal litigation in particular.

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

MR. NATHAN: Thank you [laugher]. But the most significant case that I had when I was at Arnold & Porter was the case of Charlie Finley against Bowie Kuhn. Arnold & Porter had represented Major League Baseball for a long time. Paul Porter came from Kentucky and “Happy” Chandler, one of the early Commissioners of Baseball, was the former Governor of Kentucky. He retained Porter and it was a staple of Arnold & Porter’s practice at that time to represent Major League Baseball. In this case, Commissioner Bowie Kuhn had blocked the sale of three players of the Oakland A’s, which was owned at that time by Charlie Finley. The three players were Vida Blue, Rollie Fingers, and Joe Rudi. Their contracts had been purchased by the Yankees and the Red Sox for a million dollars apiece and Kuhn had blocked the sales, saying they were not in the best interests of baseball. So Finley sued, claiming that this was his property and the Commissioner had no right to deprive him of it. The question for trial was did the Commissioner have the power to do this. It
was a fantastic experience. The trial which took six weeks in Chicago before Judge Frank McGarr who opened the trial by saying “play ball”, involved the entire history of major league baseball since the creation of the Commissioner and the first Commissioner, Judge Kenesaw Mountain Landis. I was the second chair. Peter Bleakley was the main lawyer at Arnold & Porter for Commissioner Kuhn.

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

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

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

We then went to trial and the trial was just a spectacular trial. We had as a witness a guy named Fred Lieb who had been a sports reporter in 1919. This was in the early 1970’s. Lieb had covered the Black Sox World Series and he covered the effort by the major league owners to come up with a new commissioner to oversee the game. We also had Joe Cronin as a witness who had been an all-star player and was in the Hall of Fame and then had been a manager and then an executive of the Red Sox and a president of the American League and a lot of other dignitaries from the sport. One of the
most interesting things was that we put on the record that in 1947 when the Dodgers brought up Jackie Robinson there were 16 major league teams and twelve of them voted against having Robinson play and “Happy” Chandler the former governor of Kentucky overruled the twelve owners and said it is in the best interest of baseball to integrate the sport and allow Jackie Robinson to play. We brought that in as an indication of what the powers of the Commissioner were and what the owners intended those powers to be.

Another amusing episode of that case was that after I cross-examined Gabe Paul, the general manager of the Indians, Jerome Holtzman, a sports writer in Chicago, described me in his column as a “bulldog in the courtroom.” The next day Finley left on the desk in front of my chair a can of Alpo dog food. We won that case and I was fortunate enough to argue in the Court of Appeals where we sustained that decision. That decision has led to increased powers not only of the baseball commissioner but of the commissioners of other organized sports. So that was a great experience and a great litigation to have.

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

MR. NATHAN: Absolutely. After that case most other civil litigation seemed boring and not too interesting and as a result, this was now in 1977, and a new President was in office, I applied to the Department of Justice for a position there. My application was promptly ignored for several months, and then one day out of the blue I got a call from Ben Civiletti who at that point was moving up from being Assistant Attorney General for the Criminal Division to being Deputy
Attorney General. He told me he was sitting there with the person who was
going to replace him as the head of the Criminal Division Phil Heymann, a
Professor from Harvard Law School. I had never met either of them before.
Civiletti asked whether I could come for an interview to be a Deputy in the
Criminal Division. And I said, sure I can make it next week and he said “No I
mean right now.” So fortunately at the time you dressed with a suit and tie to
the office, so I had my suit on, I agreed and without any preparation I went for
this interview. The interview went well and the following day I was offered
this position.

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

MR. NATHAN: Well, by this time I had been made partner. I had been at Arnold & Porter a
little over six years as an associate and then I made partner, I think by the end
of 1974. The interview was in 1978 so I had been a partner maybe three years
I think something like that before being offered this position. It was
interesting to me that a number of the partners at the firm recommended that I
not take this position. They weren’t focused so much on the salary disparity,
the loss of income, but they said as a partner at Arnold & Porter, you should
get a presidential appointment and this was not one. They said you should be
the Assistant Attorney General and not a Deputy Assistant. They thought it
was beneath the dignity of me and the partnership. I’m really glad that I
rejected that advice. It turned out to be a seminal experience. First of all, the
job itself was a terrific job and working with Phil Heymann was a great
learning experience. He has always been a great mentor from that time forward and the experiences that I got there were themselves educational and enjoyable. It also provided the basis for being able to do other things in private practice and then later in further government service. So I was very glad I rejected that advice.

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

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

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

One facet of it that is interesting is originally the New Jersey U.S. Attorney’s office, which was then led by Bob Del Tufo, was very supportive. We were involved with a number of Congressmen in that area, Philadelphia and New Jersey. But as the operation developed and it got deeper into Senator Harrison Williams, who had been a sponsor of Del Tufo, it got much more sensitive. At that point, the New Jersey U.S. Attorney’s office started sending memos to main Justice claiming that we were engaged in entrapment and due process violations and raising all kinds of questions about this middle man Mel Weinberg. There were also allegations about another prosecutor from Brooklyn, Tom Puccio, who had very close relations with the FBI agents and concerns that the FBI agents were steering meetings into the Brooklyn U.S. attorney’s jurisdiction so that they could be prosecuted in the Eastern District by the Strike Force there. I tried to keep these people separated and make sure that we could have winnable and prosecutable cases. I got memos from the New Jersey office on a couple of occasions that were very pro defense and very much against the Department that obviously would come out and be damaging to the government in the litigation. The line attorneys that
were handling the matter were fine people but I didn’t think they could write memos of this caliber and I looked more closely at the memos and I saw that the bottom signature, which often represents the real writer, was a guy I had never heard of. His name was Samuel Alito [laughter]. I don’t know whatever happened to him, but I suspect given his very pro prosecution views on the Supreme Court these days that he might be chagrined to see the very pro defense memos he wrote when he was in the U.S. Attorney’s office when he was a young man before he became the U.S. Attorney there. Anyway, the ABSCAM was a set of public corruption cases. There were seven separate prosecutions. They were controversial at the time when the matter became public but we persevered. We got a lot of criticism, including from the courts and the commentators and certainly from the Hill, but we did secure convictions in every one of the cases and they were all affirmed on appeal. There were some interesting interactions with the Congress as a result of all this. When the story broke, one of the committees on the Senate, the Senate Ethics Committee, called Phil Heymann and me before them and demanded the production of all the information we had on these matters before the trial. Phil Heymann to his credit said we are not going to turn over these materials, including the tapes, until after this trial is over. We got a lot of grief but we persisted. It was pretty clear to us that they were looking for this information to help the defendants in the case and not really to do an investigation. We waited and after the convictions we did provide the materials to both the
House and Senate Ethics Committees. Everyone that we charged was convicted.

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

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

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

MR. KRANTZ: [Laughter]. Second, the opening line of the movie is that “Some of the following is true,” and that is true. Some of it was true and a lot of it was made up and exaggerated. The third thing that is interesting is Mel Weinberg, the con artist that I mentioned who was key to this, is about 90 years old and was a consultant on the movie. His role, played by Christian Bale, was a Jewish con artist who was engaged in a lot of skullduggery including taking some kickbacks. A lot of that was true. In real life, I often chastised Weinberg and demanded he cut out these shenanigans, like signing a book deal in the middle of the operation, and he did not particularly like me. In the movie, the name of the con artist was Irving, and I took it personally and I thought that that was his revenge against me in the movie. And the further revenge was that there wasn’t a character who played the behind-the-scenes
prosecutor which is what I was doing at the Department. The one prosecutor
who does appear in the movie who was supposedly Tom Puccio does not
come off very well in the movie, so I did not think that was a fair
representation of what happened from the prosecutorial perspective. Still, it
was a fun movie.

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

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

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

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

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

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

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

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

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

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

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

MR. NATHAN: Yes, I was very lucky. There is no question about that. I had a good run at
Arnold & Porter from the early 1980s until about 1993. Another case that I
handled in that time that did get some publicity and was interesting and
revealing to me. I represented a partner in a law firm that was heavily
involved in a savings and loan in Florida. The lawyer was a partner and then
he became the inside counsel at the savings and loan which had gone belly up.
The prosecutor in the Miami Strike Force brought charges. First he brought
charges against the executives of the savings and loan and in that case he
claimed that the executives had gotten good legal advice but they had rejected
that legal advice and engaged in improprieties causing depositors to lose
money. So they prosecuted the executives and in that trial the prosecutors
claimed the lawyers were good guys who had given good legal advice. After
the convictions of the executives, in order to reduce their sentences, the
executives, one in particular, claimed that the lawyers were in cahoots and
they changed their story. The same prosecutor now proposed criminal charges
against the lawyers. My client was one of them and was the main lawyer
involved. This lawyer had been granted immunity in connection with the first
trial but now he was being prosecuted even though he was essentially saying
the same things now that he had said earlier. I urged Justice not to allow the
charges to go forward, but my request was turned down and they brought
charges. The first thing I did – and this was all reported in a book called Main
Justice by Jim McGee and co-author Brian Duffy – was to fly to Miami where
he was going to be charged and sued to enjoin the indictment on the ground
that it was a breach of contract, a breach of the immunity agreement. I argued
that he had lived up to his agreement but the government had not. The judge
took it under advisement but rejected our claim. We had a lengthy hearing
and then the court allowed the indictment to go forward. In the middle of that
proceeding, by the way, when President Clinton was elected and Phil
Heymann was asked to be the Deputy Attorney General, he called me and
asked if I would come back and be his top assistant. I said this was an
inopportune time because I was now handling a case against the government
and making arguments that the Department of Justice had improperly handled
this matter. I said I would get back to him when the proceeding was over. I
went back into the courtroom and advised the court that I had had this call
from the DOJ, and the prosecutor said that I should be recused, that I should be taken off this case, because now I wasn’t going to be a diligent lawyer for my client because I was going to seek favor with the DOJ for a job. I made it clear that I had not initiated this call and it was the DOJ that was conflicted and I suggested that this prosecutor should be recused and the case should be tried by another department like the Department of Agriculture. Anyway, the judge calmed things down and asked my client if he was satisfied with his representation and he was and we went forward.

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

MR. NATHAN: I did.

MR. KRANTZ: What year was that?

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

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

This interview was conducted on behalf of the Oral History Project of the District of Columbia Circuit. The interviewer is Sheldon Krantz and the interviewee is Irv Nathan. The interview took place at the D.C. office of DLA Piper on July 20, 2016. This is the third interview.

MR. KRANTZ: The first interview which took place on January 9 and covered Irv’s roots, the stage of his life prior to becoming a lawyer, the time period he spent at Columbia Law School and his initial clerkship with Judge Simon Sobeloff. His second interview covered the time period at Arnold & Porter, his first stint at the Dept. of Justice, and his return to Arnold & Porter. Today what we plan to cover are questions relating to his return to the Department of Justice and the Deputy’s office, his return again to Arnold & Porter, and then, if we have time the period when you served as the General Counsel in the House of Representatives and later as the D.C. Attorney General. So with that background, Irv let’s turn back to you and you just had finished talking about your time period at Arnold & Porter and we were then going to focus on what happened thereafter. So why don’t we start there.

MR. NATHAN: Well, before I get to my return to the Department of Justice, there was a very important professional experience that I had in 1991. At that time Arnold & Porter had a sabbatical program and I had deferred and therefore was eligible for a nine month sabbatical. Sheldon, you helped very substantially to arrange that for me because what I did on the sabbatical was to go to San Diego and both teach at the University of San Diego Law School and to work with the Federal Defender’s Office, headed by Judy Clark. I appreciate your help in
that regard. As to the teaching, the dean of the law school at that time was Christine Strachan, and she urged me to teach a course that she called Washington Scandals. It dealt with a number of the matters that had gone on during the time of my practice. One was Watergate, and her husband actually was a defendant in the Watergate case. He had worked at Nixon White House. It also dealt with ABSCAM, which I described last time, and the Keating Five congressional hearing and other matters like that. The Keating Five were five senators who were called up on the charges before the Senate Ethics Committee for dealing with the banker Charles Keating. It was really instructive to study those matters, to read up on them and to teach lessons that I could derive from them. The thing I found most interesting about teaching in 1991 about Watergate was that the students had never heard of Watergate and in fact they didn’t even believe me when I had told them what had happened. They hadn’t heard of it because it happened either before they were born or when they were infants. And it had happened too recently – in the early 1970’s – to be in their history books, so it was something that hadn’t been covered for them in high school or in college lessons. And they were astounded at what had happened. It tells you how passing these things are and how people don’t know about relatively recent history. When I realized that they didn’t know anything about Watergate, it said to me that I didn’t know much about Teapot Dome which also happened about 30 years or so before I was in college and law school.
MR. KRANTZ: I just want to make the observation that because I recommended or helped make the arrangement for you to go to San Diego you will be happy to hear that that recommendation has not come back to haunt me. Not yet, anyway!

MR. NATHAN: And the second part of that sabbatical was working at the Federal Defender’s Office which was a great experience. That office at that time was run by Judy Clark who is an outstanding criminal defense lawyer. She was an expert on the sentencing guidelines and on major capital cases. She ran a tough office insisting that her lawyers dress appropriately and act appropriately with indigent clients the same that commercial lawyers would do with their clients. In that office I tried a number of cases, defended criminal cases that mainly involved Mexican nationals who had come over the border either with other people or with guns or with some inappropriate matter such as drugs. It was a great experience. It was difficult because the court there was pretty conservative and often ruled against the office in matters like search and seizures where I thought on the evidence they should prevail. The other thing I learned was that the defendants, the Mexican nationals, were not fully trusting of their lawyers because they thought that since they were being paid for by the government they couldn’t really be trusted. That was an unfortunate situation the lawyers had to overcome. It was a great experience to see what these young lawyers were doing to defend individuals and the way the court operated. I had a number of interesting cases and I really appreciated that experience. When I came back after the sabbatical, I continued the practice at Arnold & Porter, and that is when I handled a case that I described last time,
the Ken Treadwell case involving the lawyer that had been given immunity and was then indicted. Then when Phil Heymann was named the Deputy Attorney General in 1993 at the beginning of the Clinton administration, I returned to the Department as his principal assistant. The job was called PADAG, Principal Associate Deputy Attorney General. And in another personal aside, Sheldon, Phil Heymann put together a great office, with very talented people, one of them you may know, a woman named Laurie Robinson – your wife – which ultimately led to her getting the appointment to be the head of OJP where she did a great job. And there were others, like Rod Rosenstein who became the U.S. Attorney in Maryland, the longest serving U.S. Attorney I think in Maryland history, and David Margolis, a great lawyer and a shrewd bureaucrat who sadly recently passed away. It was a great office. Unfortunately, this stint did not last that long. Phil and Attorney General Janet Reno came to a parting of ways in about a year so I was only there for about a year. It was a tremendous learning experience because the Deputy’s office supervises a number of components of the Department of Justice – the FBI, DEA, the Bureau of Prisons the Criminal Division and criminal components of other divisions such as tax and civil rights. So it was an excellent learning experience with a great opportunity to see a broad array of what was going on at the Department of Justice and around the country.

MR. KRANTZ: And what were your impressions of the Attorney General at that time?

MR. NATHAN: Well Janet Reno was an experienced prosecutor because she had been the District Attorney in Miami. She was a very serious and certainly wanted to do
the right thing. She was very conscientious. I attended her staff meetings once a week and I know how dedicated she was to doing the right thing and not having politics intrude. On the other hand, it turned out this stint at the DOJ was, for a variety of reasons, much less satisfactory than the first one because politics did play a much bigger role at the Department in that time. When Phil and I were in the Department in the Carter administration – that was immediately post-Watergate – there was quite an emphasis on having the White House have nothing to do with the DOJ and having it be totally independent and basically keeping out of the Department’s business, The Department was completely independent and was going to do what the leaders there thought was the right thing to do. In the Clinton administration, the Carter administration was viewed as a failed administration because it was not re-elected, and the Reagan administration which had two terms was viewed as being a successful. One of the lessons the Clinton White House drew from this was to have the White House much more involved in policy matters at the DOJ, not in cases but in policy. So, as an example, this was a time when legislation was proposed by the administration that had a lot of mandatory minimums, a proposal for three strikes and you’re out with a life sentence, and legislation that had a lot of offenses carrying potential death sentence. The death penalty was a punishment provided for many different offenses supported by the administration. This was ironic because Janet Reno was an opponent of capital punishment but she was the spokesperson for the administration to support such legislation. And it was a little frustrating
because we in the Deputy’s office – particularly Phil Heymann – thought that a number of these legislative proposals, such as the mandatory minimums and the three strikes and you’re out, were not very sensible provisions. We made that clear but they were politically popular and we didn’t have much luck in staving off the politics. I think that the country has come to regret some of that in current times. To me, it underscores that we should be dealing with the merits of these kinds of proposals, and leave the political consideration aside, but that was not the case and is not likely to be in the future.

MR. KRANTZ: So then did you leave shortly after Phil Heymann left?

MR. NATHAN: Yes. I was there for a while after he left. I helped make the transition smooth. Jamie Gorelick came in as Deputy, and she wanted Merrick Garland to be her principal associate, which made a lot of sense. Merrick had been in the Criminal Division as a deputy, and he had long known Jamie and she justifiably had great confidence in him. While I was there, I focused on a number of policy issues. At the Deputy’s level, we were not generally dealing with cases as we had done in the Criminal Division but some policies, and I didn’t really succeed. I didn’t think they were right but I could not convince the powers that be. For example, under Rule 16 of the Federal Criminal Rules, we had proposed that prosecutors be required to provide the names of the witnesses in advance of trial, unless there was a motion made to the court that said that the witness’s life or health would be in danger or there could be some demonstrable adverse consequence from disclosure of that witness’s identity. The truth is that not only did the defense lawyers want that but the federal
judges wanted to change that rule because they thought that if the government
provided the names of witnesses that would lead to pleas based on how strong
the government case was. But the prosecutors did not want to change that rule,
and the official position of the Department was represented by the organization
of U.S. attorneys in the executive office. They opposed that rule change and
threatened that they would take it to Congress if the judicial panel on federal
criminal rules proposed that rule change. Another rule that I tried to modify
was dealing with contacts with represented parties. I thought that the FBI,
when they knew that a person was represented by a lawyer, should not make
contact directly, that the agent would go through the person’s lawyer. Again
with certain exceptions such as if they were an undercover operation. Again I
wasn’t successful in that. The one thing that I did very helpfully during that
period, this was the period of the Whitewater allegations that were raised, was
to assist in naming the initial special counsel. At this time, the Independent
Counsel statute had lapsed, there was a sunset provision in it, so this was a
time where there was a hiatus and no operative law on the books so we had to
appoint a special counsel. This was not done under the statute, but the
Department could directly appoint a special counsel, and my suggestion was to
appoint Bob Fiske for that position. He was a really responsible and
experienced former prosecutor in the Southern District and a Republican with
no political ambitions. I had worked with him in private practice and admired
him greatly. He was appointed by Janet Reno and he began the investigation.
He was doing a great job and then the statute was reenacted and that required
the court to make an appointment. We at the Department proposed that, since
Bob Fiske had done a lot of good work on this, he be appointed by the court to
be the Independent Counsel. But the three-judge court saw it differently. They
thought Fiske was tainted because he had been appointed by Reno and they
appointed Ken Starr to be the Independent Counsel. I was on record on
television the very first day and argued that Starr was not the appropriate
person because he did not have prosecutorial experience and because he had
other higher office ambitions. He had been rumored to be considering a run for
the Senate from Virginia and he was also a potential Supreme Court justice.
Frankly, I think that Starr and also later Judge Walsh, in connection with the
Iran contra investigation, misused the independent counsel statute and as a
consequence it was terminated by the Congress.

There is another matter that I continue to think I was right on, but that
turned out to be a low point for the Department while I was there. There was a
case called *U.S. v. Knox*, which involved a graduate student at Penn State who
had been convicted of possessing child pornography and had been sentenced to
five years’ imprisonment. That conviction was affirmed and he was
petitioning for cert to the Supreme Court and it came to our office because a
Deputy in the Solicitor General’s office thought this was a miscarriage of
justice. According to the brief, the material that this student possessed did not
involve any sex or any nudity. It involved an actress who was about 18 years
old playing a cheerleader in her gym clothes and the camera allegedly lingered
too long on her fully clothed private parts and the lower courts concluded that
was pornography and he, who possessed but did not direct, produce or
distribute the film, was going to serve five years. So we filed something with
the Supreme Court – it wasn’t quite a confession of error – but it was a
suggestion that the matter be remanded to the Circuit Court for further
consideration. It was remanded by the Supreme Court in about an hour after
we filed our papers, but shortly thereafter we got a written demand from the
Senate Judiciary Committee that said, it came over late morning, give us your
explanation for being soft on pornography by 5:00 this afternoon. We were
drafting a letter to get in by 5:00 but at about 4:00 we received notice that the
Senate had voted 100 to 0 censuring the DOJ for being soft on pornography.
That did not make Janet Reno a very happy camper, but I continue to believe
that we did the right thing in an effort to negotiate a sensible resolution for Mr.
Knox.

MR. KRANTZ: Which clearly establishes, Irv, that you can do the right thing and still lose.

MR. NATHAN: Exactly and be criticized for it [laughter]. So a short time after Phil Heymann
left, I did return to A&P for another substantial stint.

MR. KRANTZ: And what were the years?

MR. NATHAN: I think it was from June, 1994 to 2007 that I was at A&P. For the third time.

MR. KRANTZ: So that was actually quite a long period of time.

MR. NATHAN: It was a long period of time and I had again a number of interesting matters.
Several of them that developed from serving in the government. I represented
some senators and their staffers in either internal investigations in the Senate or
grand jury investigations. A fair number of my matters were RICO cases,
including civil RICO suits. I represented a major tobacco company which was sued under civil RICO by foreign governments. One was by the European Union and its member countries and another was brought by the states of Colombia. The claims in these matters were that international cigarette companies were not paying foreign taxes and import duties for cigarettes manufactured in the U.S. and sold abroad. We had lengthy hearings and motions. We won those cases under a doctrine called the Revenue Rule which provides that foreign countries cannot sue in the U.S. courts under their tax laws. Even though this was styled a civil RICO, case it was really a tax collection case. We also argued that the RICO statute while it incorporates some laws that involve offenses overseas, the injuries have to be sustained in the U.S. under the treble damage provision. We argued this in the late 90s and only recently the Supreme Court ruled in that fashion, agreeing with our interpretation of the law. One case that I particularly remember that we handled in a grand jury involved a large company. We had to come up with a novel defense for it because another company in the same industry had already pled guilty to exactly the same charge, and we were then faced with the same investigation by the same office. I developed an argument that demonstrated that the government’s theory was not a proper interpretation of the mail fraud and wire fraud statutes. We had a good recent Supreme Court case on point and I wrote a long letter essentially saying that if the government charges our client, we are going to raise this defense and that will undermine the prior conviction that you have. So after the letter was sent, I went with an assistant
general counsel of the company to the U.S. Attorney’s office and the US attorney and his assistants took us into the Grand Jury room and he laid out all the evidence against the company and said we could indict the company and we would win, but it would be just too much of an effort and we don’t have the resources and so we are not going to prosecute. I then proceeded to start to refute all the evidence that they had shown us in the buildup of this presentation. The inside counsel said “You can’t take yes for an answer and let’s get out of here!” So we did depart and the company was not charged.

Amusingly, the lawyer for the company that had plead guilty I think believes to this day that somehow we did something improper with the U.S. attorney to have our client not charged. But in truth we only relied on a good legal argument that we had developed.

Another major matter that I handled at that time, related to an independent counsel investigation, a preliminary investigation that was conducted against the client Andrew Cuomo who at the time was the secretary of HUD. I was retained by him and his father--Mario. Mario told me that it would be the mutilation of Andrew’s political career if an independent counsel were appointed. Basically, we had 90 days to disapprove the allegations and to satisfy the Department that there was no point and no justice in appointing an independent counsel. But we succeeded and the matter was properly closed without the appointment of an independent counsel. Mr. Cuomo is now the Governor of New York having been re-elected. I very much enjoyed that
representation, particularly strategizing with Mario Cuomo who was a brilliant lawyer and a devoted father.

One other matter I should mention is my defense of the CFO of WorldCom, Scott Sullivan. This was a very difficult representation because it was a high profile matter, where he faced very serious consequences in both criminal and civil matters, where he had a very sick wife and a young child and where his relatives, who had brought us into the matter, were convinced he had done no wrong. After very contentious proceedings with the U.S. Attorney’s office in the Southern District of New York and the SEC, we were able to work a deal, whereby in return for his testimony against others, he received a relatively lenient sentence. We also negotiated an excellent agreement with the SEC, which allowed him to keep most of his assets for his wife and child. Scott is now on the speaker’s circuit as a born again Christian, and I am pleased that we were able to get him past his problems and move on with his life.

So there were a number of matters that came up like that in that period at Arnold & Porter.

MR. KRANTZ: There are a number of people who have the view that once you have served in government positions like you have served feel like public service is a better career than being in private practice. It seems to me that you may be an exception in that regard particularly since you had such exciting opportunities while in private practice, is that right?
MR. NATHAN: Well, I realize I have been very lucky in my career. I have been very pleased and fortunate that I was able to be both in private practice and in government service. I have always wanted to serve in government. That is one of the main reasons why I came to Washington to practice, but I also think that the service in the government helps to enhance your career in private practice, and I got some matters that stem from that. I’m not a proponent of the notion that the revolving door is a bad thing. I think it is a very good thing. I think it is helpful to private clients when the lawyer has been in the government. As a former government lawyer, you have a good idea of what the government is interested in and can explain that to your client—which, in my opinion, is generally doing the right thing and having diligent people or trying to serve the public interest. That is my experience with career prosecutors and career government lawyers. So with that knowledge, you can explain to your private clients what is the government’s goal and how to navigate the shoals of a government investigation or charges. Conversely, having been in private practice and understanding how corporations work and how the private industry works, you can explain to your government colleagues if you are in the government, how certain things operate in the other sectors of society. In one example I can recall, when I was in the government after having been in private practice there was an investigation of a Senator, and the prosecutor thought that the Senator was clearly corrupt because when a bill was introduced affecting an industry in his state, he took jurisdiction in his committee over that bill. I was able to explain to it was quite usual for a
committee chairman to take jurisdiction over a bill that affected the industry. His committee was supposed to oversee and, it doesn’t suggest corruption that a bill goes to the committee with the right jurisdiction over it and you can’t jump to any conclusions based on that alone. There were similar situations where private people in the industry made judgments about the goals of prosecutors which I didn’t think were warranted and could explain where I thought the prosecutor were coming from. So I think as long as you have your eye on the ball and you know whom you represent and what the interest is that you are representing, you can inform that representation by knowledge both of private industry and government service and you are helping your client whoever your client is at that time.

MR. KRANTZ: Now, unlike a lot of other people who have not had the same extensive government experience, you had a fairly diverse series of positions. What led up to your leaving Arnold & Porter and becoming general counsel of the House of Representatives?

MR. NATHAN: Well, let me say I was not seeking that position. I think it’s actually an amusing story. I’ll tell you how this came about. I made no secret of the fact that I like government service and I was looking to do government service. I thought honestly after the last stint in Justice that was probably the last time I would be in government service and I would be expected to retire from private practice. But because people knew I was interested in it, one day while I was sitting at my desk at Arnold & Porter, I guess in 2007 I got a call from a friend who had joined the staff of the Speaker of the House, Nancy Pelosi, and he
said would you be interested in being considered for the position of General Counsel of the House? And I said well what is that job? And he said you don’t need to know because you’re not going to get the job. I just want to know if you can be a part of the group who are going to be considered for the job. He made clear that the Speaker was likely to choose a woman for the position. So I said well you know Nancy Pelosi was the daughter of the mayor of Baltimore while I was growing up; we did not run in the same circles, and I had always wanted to meet her, so I would be happy to be considered if I could get an interview with Nancy Pelosi. But it turned out when she read my resume, she saw I had clerked for Judge Sobeloff and Judge Sobeloff was a very prominent figure in Baltimore, in fact he had been a city solicitor in Baltimore. At the time he was a Republican and he was a city solicitor for the Republican mayor that preceded her father but I learned later that he also stayed over and worked as city solicitor for her father. So she knew him and had a high regard for him but mostly she was fascinated by the fact that if I clerked for Judge Sobeloff I must be very old and decrepit. She conflated my age with his – he was 75 when I clerked for him and I was 24 – and she wanted to see if I could walk in on my own without literally being carried in or without an oxygen tent. So when I came in, not quite that old and when we shared stories about Judge Sobeloff we hit it off and she offered me the position basically saying if you were good enough for Sobeloff you’re obviously good enough for this job. So as a result I did have that opportunity and I was delighted to take it, and it turned out to be a really good experience.
MR. KRANTZ: You had indicated that prior to taking the position you were not fully aware of
the kinds of things that a general counsel in the House of Representatives does,
I guess you learned very quickly. What were some of your tasks and what
were some of the most interesting experiences you had?

MR. NATHAN: The general counsel of the House represents the institution, the members and
staff in matters that relate to their official duties. So a fair bit of it was to deal
with the Speech or Debate doctrine, the privilege in the Constitution that
protects the members or their staff in anything involving legislative matters
from being subpoenaed or sued or otherwise called to account anywhere other
than in a legislative forum. As a result, at that time, it was a heavy litigation
load of representing members who were being subpoenaed or sued. One of the
first matters that I handled was the aftermath of the search in Congressman
Jefferson’s office where for the very first time in our history the executive
branch had executed a search warrant on the premises of the House and had
taken the records of Congressman Jefferson who was suspected of and later
proven to be involved in corrupt activities. They had searched his home, that
was where they had found the cash in his freezer, but they also searched his
office and took away lots of records. That happened before I was there, and
motions had been filed before I was there by the person who was my deputy
who is an excellent lawyer, Kerry Kircher, but thereafter there were a lot of
proceedings relating to protecting those privileged documents. So we had
litigation over those documents that had been taken. Another matter during my
tenure was an impeachment of a federal judge, Thomas Porteous. He was a
Louisiana federal judge. His basic argument was that yes he had taken money from parties in litigation before him, but he had taken money from both sides and that hadn’t influenced his decision. He and his lawyer apparently thought that was a great defense. He was represented by Jonathan Turley. We didn’t think that was much of a defense. The issue was whether the House was going to impeach him. He brought a lawsuit claiming that testimony that he had given before a judicial disciplinary panel could not be used against him in the impeachment process in the House. We moved to dismiss that on the ground that what happened in the House could not be challenged in another place, and we won that lawsuit, that was dismissed. We advised the committee dealing with his impeachment. He was impeached, I believe unanimously. It was a pretty difficult thing to get unanimity on anything in the deeply divided House of Representatives at that time. He was convicted by the Senate and removed from office.

Those were the kinds of matters that we handled, but the most significant one during the time that I was general counsel of the House related to the firings of a number of U.S. attorneys in the second Bush administration. George W. Bush had appointed U.S. attorneys. At the beginning of his second term, he fired a number of them in a very peculiar way, without notice or explanation. A number of those attorneys were very highly regarded. Actually, before I become the general counsel of the House, I had already taken on the responsibility of being a senior legal adviser on the House Judiciary Committee that was looking into the question of these firings. Then later I
was asked to become the general counsel. During that investigation when I was the general counsel of the House, subpoenas were issued by the House to the former White House counsel--Harriet Miers—and by the Senate to Karl Rove. At the advice of the White House counsel, they both refused to appear. They not only refused to testify they even refused to appear and honor the subpoenas, claiming that they were immune because they were (or had been) high White House officials. We thought there was no merit to that proposition. And the question was how to resolve it. Harriet Miers was held in contempt of the House, and a reference was made to the DOJ for criminal prosecution. Obviously that was not going to happen. It was the Republican administration which had recommended that they assert this immunity, and the Attorney General wrote a letter to the Speaker advising that they were declining to prosecute.

The second traditional way that this could be handled was to have the House Sergeant of Arms go out and arrest the person who was held in contempt. They could be tried in the House and imprisoned in the House for the session of the House where this contempt had taken place. That procedure was followed in the 19th century and approved by the courts. It hadn’t been followed after the 1920’s, and what used to be the prison in the House is now a snack bar, and I think everyone thought it would be cruel and unusual punishment to keep someone in the House snack bar for the term of Congress. The trial in the House did not seem like a politically viable way, and I suggested that we could bring a civil suit. It would be the first time that a civil
suit was brought to compel the testimony of the executive branch, of officials who were refusing to testify. There was a lot of debate on the issue and after a suit was approved by resolution of the House, I went to the minority leader who was at that time John Boehner, and I said this is an institutional matter and Republicans should join in this lawsuit. I said it doesn’t take a lot of imagination – this was in 2008 – to think there will come a time when there will be a Democrat in the White House and Republicans will control the House of Representatives, and you’ll want to have this authority. Mr. Boehner refused, saying this was a partisan matter, which I did not think it was. Not only did they oppose the suit, and they even filed a brief against us, claiming that the case was not ripe. The case was heard by Judge John Bates in the District Court in the ceremonial courtroom, with the White House counsel, Fred Fielding, at defense table, and Judiciary Committee Chairman John Conyers at our table. After the three hour argument, we did not know how the decision would go, but we did know that both sides had presented all their best arguments and that the court understood them. Less than a month later Judge Bates wrote a superb decision rejecting all of the arguments that the DOJ presented. He rejected their procedural grounds to avoid the merits and then on the merits, concluded that there is no immunity for White House officials from a Congressional subpoena. He ruled that executive officials, like everyone else, have to abide by the subpoenas and, if they wish, raise a privilege objection on a question by question basis, but they couldn’t just ignore the subpoena. After that ruling, the Obama administration came in and
we basically worked out a resolution of the matter. But that precedent stands. It is an important precedent for the House. Ironically, a year or so later when President Obama was elected into office in 2009 and a fight broke out between the House which was then under control of the Republicans after the 2010 elections, in the fight with Eric Holder over the so called Fast and Furious investigation, it was that precedent that the Republicans used to go to court. They sued Attorney General Holder and get some relief from the Department of Justice. So that precedent stands as an important precedent for the House. There were a number of other very interesting matters and it was a great opportunity and a thoroughly enjoyable and instructive professional experience. But then when the Republicans took control of the House, I didn’t think the new majority wanted my services anymore, and that’s when I moved on.

MR. KRANTZ: Okay, you certainly raised the realities of the political process within Congress. Could you talk just a little bit more about that overlay and how it affects your job when you are general counsel hired by the majority party and you have a minority party that is trying to resist your efforts? On a day to day basis does that make the job extremely difficult to do?

MR. NATHAN: No. And we did not represent the majority party. I viewed the job as a non-partisan job. I viewed it that we were representing the House as an institution and then we represented individuals who were subpoenaed. So if it was a Republican congressman that was subpoenaed, we represented him or her without regard to the politics. We assisted them with respect to the assertion of
whatever privileges they had based largely on the Speech or Debate clause or whether they had any other issues. There were other more mundane matters that we dealt with for representatives. For example, each of the representatives has an office in their home district and sometimes they rent space and they have issues with the lease there. We would provide representation and advice with respect to that. There were issues about taxation because they were immune from certain local taxes and we would deal with that. And on all those matters we would deal equally, whether it was a Republican or a Democrat and we would maintain their communications in confidence.

MR. KRANTZ: When you focus on your point which is that your client the House of Representatives and either Republican or Democrat but if you are trying to deal with the client, when you have two different parties, what is the process of doing that?

MR. NATHAN: Sometimes, as for an example, in the lawsuit involving the enforcement of the subpoenas, we had to get approval and in that case it was such a high profile and an important matter that actually did go to a vote of the entire House, so that we had a resolution that would pass by majority and the Democrats were the majority so their view prevailed. In other situations, they have at the House what they call the Bipartisan Legal Advisory Group which is a group of five members of Congress who are usually represented by their staffs. It’s made up of the Speaker, the Majority Leader and the Majority Whip and then the Minority Leader and a Minority Whip. Decisions are made by that five person organization and obviously if the issue divides them politically, the
majority -- the three who are in control of the House-- gets the decisive vote. So there were cases where we filed amicus briefs in cases that were pending and where we wanted the courts to know the interest of the House as an institution. Sometimes in those cases there was a partisan divide. When we filed the briefs, we would note that the authorizations for filing it was based on a three to two vote by this group, which was called BLAG. So that’s how those decisions were made.

MR. KRANTZ: Okay, well we only have five more minutes for the purpose of this particular interview, and what I would like to use it for is to set the stage for how you happened to have another position in government, this time with the District of Columbia when you became the Attorney General for the District of Columbia.

MR. NATHAN: Right. I should mention that another set of cases that I dealt with in the House had to do with times when there were misrepresentations made to the House by witnesses and there were going to be criminal prosecution referrals. A lot of people in the House, both Members and staff did not want to testify in those kinds of matters out of concerns about waiving privileges and so forth. One of those matters was the case about Roger Clemons, the major league baseball pitcher who had testified about steroids and was accused by the Committee of perjury. The Committee referred the case to the D.C. United States Attorney and the U.S. Attorney’s office did bring the criminal case. We had to prepare the witnesses and encourage them to testify, even though they were reluctant to do it. We recognized that unless we did cooperate we would not have a mechanism to get truthful testimony. This is another example that without
regard to politics, it’s just a question of serving the institution to get the right answer. But again the decision as to who is the general counsel of the House rests with the Speaker and the Majority party. It’s no secret that I didn’t have a great rapport with the Republican leadership and the Republican staffers on BLAG, so in November of 2010, when the vote was that the Republicans would take over the House, I submitted my resignation and said I would leave at the end of that term.

I was fully expecting to either retire or go back to law practice or to teach, when out of the blue I received a call from the Mayor-elect of D.C., Vincent Gray, who had just been elected. I had not known him or campaigned for him. He called me, I did not initiate this, and he said that he had been checking around with a number of lawyers and that my name had come up as a person who might be considered for D.C. Attorney General. At that time in the District, the Attorney General position was an appointed position, although prior to his calling me the City Council had changed the law to be effective sometime in the future, at the end of that Mayor’s term, so that as of 2015 the position was going to be an elected position. In the interim under that legislation the Attorney General would be appointed by the Mayor and confirmed by the City Council and could only be fired for cause. So the new AG did not serve at the pleasure of the Mayor but could only be fired for good reason. So Vince Gray called me and I went to interview with him, and we developed an instant rapport. I thought (and continue to believe) he was very intelligent and a decent person and had a good understanding of the issues and
the relationship between the Mayor and the Attorney General. He was concerned that—and again this goes to who the client is—that the prior attorney general had viewed his job as representing the Mayor. But Mayor-elect Gray and I thought the job was to represent the city and to represent the Corporation which is the City of the District of Columbia. Before the position was called Attorney General, it was called the Corporation Counsel. Our conversation focused on who would be the client and what you would do under certain circumstances and we both agreed the Attorney General was not representing the Mayor personally unless it was a lawsuit in which the Mayor had been challenged on something that had been done in his governmental capacity the same as it had been in the House. We represented the House as an institution and then members if they were sued in their official capacities or for things that had happened in government service. I thought the same thing applied to the city and city agencies, and we weren’t there to deal with the politics of the situation but to deal with the law and he had a similar approach. He offered me that position and I took it quite happily. It turned out to be a lot more complicated than I expected. A city is a very complicated institution with lots of different agencies and different situations. I was confirmed unanimously by the City Council, and it turned out to be a really interesting and excellent professional experience.

MR. KRANTZ: Because your prior governmental experience had been the federal level did you have some hesitancy or concerns about suddenly being in a position that dealt with a different set of laws and cultures?
MR. NATHAN: Well I did have some concerns, but I loved the challenge. It was an interesting challenge, and, of course, the city of Washington, the District of Columbia, is really a unique institution. Obviously it’s a major metropolitan center. It’s a city. But for many purposes, it operates as a state vis-a-vis dealing with Federal agencies, for example. And then in other circumstances it’s a constitutional entity reporting to and controlled by the Congress. There is a very interesting dynamic and relationship between the Congress and the city so in some ways it’s like a territory. So it is a unique institution – as a city, state, territory and a federal enclave with lots of issues. That is one of the things that made the job extremely interesting not only dealing with the city agencies and dealing with the federal executive branch, and the Congress but also dealing with surrounding jurisdictions, Maryland and Virginia, such as with the Metro Board. So it was a terrific opportunity, challenge and a great learning experience.

MR. KRANTZ: Well I think this appropriately sets the stage for what will be our last interview which will cover the time period when you were the Attorney General of the District of Columbia. Also what you have been doing since that time and your observations about what would flow from the rich experience and career that you have had. So this draws our third interview to a conclusion.
MR. KRANTZ: The purpose of this last interview is to focus on Irv’s time as the Attorney General of the District of Columbia, his service as the chair of the Council for Court Excellence, and Irv’s observations on changes in the practice of law in the past 50 years. So we are going to start, Irv, by focusing after learning a lot about various stages of your career about your becoming the appointed – and I guess now we could say the last appointed – Attorney General of the District of Columbia. How did that come about?

MR. NATHAN: Well, as I mentioned the last time, when I left the House as General Counsel and I was thinking about other possibilities, out of the blue I got a call from the Mayor-elect Vince Gray. He had received my name from a number of sources, including Bob Bennett. He asked me to come in and interview about the position and I was happy to do that. About a week or two later he called and offered the job. I was pleased to accept and it turned out to be an excellent experience, the culmination of my many years of practice. I really did not know much about the job before he called. I did do some research on it in anticipation of the interview. What I realized when I got into it was that it really utilized all of the talents and experiences that I had had in my prior career. Obviously, the job entails supervising the litigation for the District both in the local courts and in the federal courts and local appellate court and
the federal circuit court. Obviously I had a lot of litigation experience since I started Arnold & Porter back in 1968. But it also involved some criminal jurisdiction, not enough in my opinion, but we had misdemeanor jurisdiction so therefore my time in the Criminal Division of Justice came into play. I also supervised lots of attorneys when I was the deputy assistant in the Criminal Division of main Justice as well as at the firm. And I dealt with political issues when I was the general counsel of the House and of course there were a number of political issues dealing both with the City Council and the Congress and also dealing with the press which I had done when I was in both the DOJ and the House GC’s office. So it brought together a lot of experiences and developed skills, and it was a very challenging and interesting experience. One of the benefits was learning a lot more about the city. It was a chance to give back to the city that has been so good to me and my family for more than four decades.

MR. KRANTZ: What would you say with respect to the autonomy or independence of the Office of the Attorney General as it relates to the Office of the Mayor?

MR. NATHAN: Well I was Attorney General at a very fortunate time. I really lucked out in this respect. What had happened was that in reaction to my predecessor, the City Council had passed a statute that said four years hence there would be an elected attorney general and in the interim the attorney general appointed by the mayor would have to be confirmed by the City Council as had been the case in the past, but the incoming AG would not serve at the pleasure of the Mayor but could only be terminated for cause. So the Council had built in an
independence for the AG’s office which I found very useful. While I was independent of the Mayor in the sense that I made the ultimate decisions in the running of the office of AG, I was still appointed by him and was a member of his administration. As a result I attended all of the cabinet meetings of the Mayor and I attended his weekly senior staff meetings. When I testified before the Council, it was on behalf of the administration and the positions had been worked out in advance and I agreed with them. If there had been situations where I had disagreed and I had a different policy view, I would have expressed it and explained, but that did not happen over the four years. I had a wonderful working relationship with Mayor Gray. He is a very intelligent man and in my experience he was always interested in doing the right and lawful thing. We really had no major disagreements during the four years I was there. So it was a situation where we could work harmoniously and yet at the same time our office was independent. We could make the litigation judgments we had to make and do what we thought was right for the city. When there were situations that I thought could be sensitive, I always alerted the Mayor in advance of what we were going to do so he wouldn’t be taken by surprise, but it wasn’t a situation in which he had any power over our decisions.

MR. KRANTZ: There are often questions raised in a situation like the one you were in about who is the client when you work with a range of executive level agencies and the City Council. Could you talk a little bit about how you would work through those issues?
MR. NATHAN: Yes, that was an important topic of discussion with Mayor-elect Gray when I was seeking and he was interviewing me for the position. He had the impression, and I think it was a fair impression, that the previous Attorney General had perceived the Mayor as his client. He took actions that were clearly on behalf of the Mayor. My view from the beginning was that the client in this situation was the municipality of the District of Columbia. The AG office was formerly known as the Corporation Counsel. In my view, the municipal corporation of the District was our client and we had to do what was in the best interest of the municipality, which means of course the people of the District and the long term interest of the District. That was the ultimate client but there were times that our office also represented the Mayor if the mayor were sued. In the litigation he was a client, and we would represent the mayor and individual officials of the District Government on occasion when they were sued or when we were giving advice to them because when we were asked to give advice to the heads of the various departments. If there were conflicts, and that didn’t happen very often, we would seek separate counsel for individuals, heads of agencies or employees of agencies when we thought that their interest differed from the interest of the municipal corporation. It did not prove to be a problem as we worked it out over those four years and I never lost sight of the fact that the city and its residents were our ultimate clients.

MR. KRANTZ: There is a lot of rich history relating to the Office of Corporation Counsel and the Office of the Attorney General. When you got there, what did you find
with respect to the quality of the lawyers who were there and the work that was done?

MR. NATHAN: I thought that there were some extremely able lawyers in the office and I was very pleased to find that. Obviously, some people had been there a long time and were not motivated to work the hardest. I tried as best I could to ease out those folks who had lost some energy and weren’t at the top of their game, but we had a tremendous cadre of talented lawyers that I inherited and then I did two things that I think improved the staff. And I think the staff that I left in the office after four years was superb. First I recruited from the private bar a number of partners of law firms who were eager to come in and help out. One of them is Sally Gere who I think is a terrific lawyer and is now a senior deputy with Karl Racine. She just did tremendous work in the civil litigation units of the office. Another was Andy Fois, who took over the public safety sector. I also brought in from private practice younger folks or junior partners. One of them was Jonathan Pittman who also worked on the civil side. So we brought in some of the talent from private practice who were eager to serve the city. The second thing we did was to work an arrangement with the local law schools. I noted that a number of the law schools were being criticized by the ABA because they did not get employment for their graduates. I saw that there were some recent graduates who weren’t getting jobs in the private sector or with other government agencies. We needed additional help, but we could not afford to pay for those folks. So we started with Bill Treanor, the dean at Georgetown law school, and we worked an arrangement whereby recent
Georgetown law grads were hired to work with us. Their public interest salaries were divided between the city and the law school. We called them “Ruff Fellows” named for Chuck Ruff who was a great friend of mine and a role model for me and a person who had been the Corporation Counsel as well as US Attorney and White House counsel and was also a professor at Georgetown and other law schools in the area. It seemed appropriate to name the fellowship for him. The fellowship was for one year. These recent grads would come in and work with us as lawyers getting great experience. They would have on their resume good experience and would get good recommendations from practicing lawyers. We offered full time jobs to ones who did very well when we had openings, and many of them accepted the positions, and continued to do excellent work. And those that had worked with us and we didn’t have a spot for them at the Attorney General’s Office, they generally received offers in the private sector or from other government agencies. So it was a triple win situation: it was a win for the law schools which increased their employment of recent grads. It was a win for the city which got energetic talented lawyers and it was a win for those lawyers who got experience and were able to get hired on a permanent basis. The program expanded to several other law schools, including George Washington, UDC, American and Howard. As a result of recruiting from the private sector and the law schools, we brought in people with experience, energy and commitment so that we met the goal that Vince Gray set for us – to develop a really first rate
professional organization of lawyers in that office. I am very proud of the work that they did, and the legacy that I left for my successor, Karl Racine.

MR. KRANTZ: As you should be. Now there were, Irv, a series of intriguing matters that you had to deal with during the time you were the Attorney General. I want to turn to some of them. One of them relates to the relationship between the District of Columbia and Congress and the whole question of budget autonomy and other related issues. Obviously you came to the Office of the AG after serving as General Counsel of the House. So you were actually in a good position to understand the relative relationships between the federal government and the DC jurisdiction. Could you talk a little bit about the issues that came up and how you dealt with them?

MR. NATHAN: There were a variety of issues. There were difficulties because of the relationship between the Congress and the District. For example, when the federal government shut down or threatened to shut down, the District government had to prepare to shut down as well. There were even differences within the city government. The first matter, before I get to budget autonomy which I will be happy to address, that came up, was we found that there had been a significant issue of defalcation by a City Councilman. I had to be approved by the City Council. I was very fortunate to have been unanimously confirmed by the City Council. I wanted to have good relationships with all the council members and then early on in my time there it turned out that facts had been developed in an investigation that had started before I got there but had been dormant. As a result of my efforts to rejuvenate the matter, we issued
subpoenas to banks and discovered that a city councilman, Harry Thomas Jr., had taken about $400,000 of city money which had been earmarked for Little League Baseball and had taken it for his own personal use for trips for expensive vacations and the purchase of an SUV and golf equipment and other luxuries. This was sensitive because Harry Thomas Jr. was a close political ally of Vince Gray. But obviously there was no choice on our part, and reflecting our independence, we took strong legal action against him. This is an example of something where after we had made our decisions and drafted our papers I did notify the Mayor of what we were doing, I did not seek his approval, and obviously he did not seek any change in what we proposed to do.

Our civil suit against Mr. Thomas was the first lawsuit to my knowledge brought by the Corporation Counsel or the AG’s office against a sitting member of the City Council. Because we did not have criminal jurisdiction we had to bring a civil action for the return of those funds. We laid out all the allegations in a very detailed civil complaint seeking reimbursement for the city and then sent the complaint to the US Attorney’s office for what action it would take. Of course it did bring a criminal prosecution that resulted in a plea and sentencing and incarceration for the city councilman. We did work a settlement where we got what assets we could and promises for the return of the rest. So that’s an example of a sensitive matter that occurred during our time.

Another one that deals with the relationship between the Federal government and the City that was also a challenging matter was a decision by
the U.S. Department of Labor that the construction of the City Center was a Davis-Bacon project. By being designated a Davis-Bacon project, named for the statute that was enacted during the New Deal, it meant that the construction workers who built the building had to be paid at union wage levels. The City Center is a privately developed, privately financed for profit business which has multiple uses. It has private commercial offices and shops and private residences, and it is on land that is owned by the city. There is a long term lease to the city from the private developers but it was not developed by the city and the city did not employ those workers who had built it. The Labor Department decided that it was the city that should pay the difference between the non-union wages of the employees that were actually paid by the private firms hired by the private developers and what the union wages would have been. We calculated that the difference would be about $20 million, and in addition that it would set a precedent that if that were the approach the federal government took to other projects like this which were built on city land with city approvals but done in privately financed and privately developed for private profit that the city would have to pay a half billion dollars of additional labor costs. So we litigated within the Labor Department attempting to prove that this was not a Davis-Bacon project. We demonstrated it was not a public work but a private construction. When we were rebuffed by the Labor Department, we had no choice but to sue them. We filed suit in Federal District Court challenging the decision of the Labor Department. One of the things that I think that case demonstrated was the close collaboration we had
with the private attorneys in the city. Obviously we at the AG’s office did not have expertise in Davis-Bacon law and we went to Morgan Lewis, one of the premier labor law firms in the country with offices in DC, and on a pro bono basis they assisted us in doing research, providing advice and appearing on the briefs. We also worked with the private attorneys for the developers who also had an interest in our position. We prevailed in the District Court before Judge Amy Berman Jackson who ruled for us that this was not a Davis-Bacon project. The Federal government took an appeal of that decision. The Circuit Court of Appeals unanimously affirmed Judge Jackson. Our office's legal action saved the District not only the $20 million differential on the City Center project but also much greater amounts on the other projects.

MR. KRANTZ: I thank you as a resident of the District of Columbia (laughter).

MR. NATHAN: So turning to your question – a long prelude to get to budget autonomy – what happened there is that DC Appleseed came up with the idea that they thought there was an opportunity in the DC Charter for the District to take over the appropriations of its local budget. They prepared a memo which they presented to Mayor Gray who is a tremendous proponent of home rule for the District. He said I hope we can do this but you need to run it by the AG’s office to see if this is viable. So they came and we looked at their proposal. I relied on people who had been in this office, particularly doing opinions and analyses of the Home Rule charter for over 30 years, and they didn’t think this proposal passed the laugh test. When Congress granted partial home rule to the District back in the early 1970s, it specifically and expressly retained the
power over the purse, over appropriations for the District. The law specifically provided that the D.C. budget had to be sent to the President for his approval and then submitted by him to the Congress and reviewed and approved and passed by the Congress. That arrangement was ratified by the citizens of the District back in 1973 and that is the way the D.C. budget operated for the years between the grant of Home Rule in 1974 and 2012 or whenever this Appleseed proposal was presented. So we opined that this would not be lawful under the D.C. Charter and couldn’t be done consistent with the express language and the intent of the Home Rule Act. DC Appleseed was not deterred by our legal analysis and took the matter to the City Council, and the Council passed the statute taking unilateral control of the appropriation process for locally raised revenues. I had asked the Chairman of the City Council to testify in connection with the bill and he said he didn’t need our testimony. Usually on all bills considered by the Council, they request a legal sufficiency opinion from the AG's office. That was one of the things that our office did. But on this one occasion they didn’t want to hear from us. When the statute was to be effective, both the Mayor and the CFO wrote letters to the Council saying they would not enforce this statute or implement it because it would violate not only the Home Rule Act but also the federal Antideficiency law and subject them and anybody who expended money that had been appropriated to civil and possible criminal exposure. So as a result, the City Council brought a lawsuit to challenge those determinations by the Mayor and CFO. The Council brought suit in Superior Court and we removed it to the federal District Court. We
filed briefs and I personally argued the case in the federal District Court before Judge Emmet Sullivan. Judge Sullivan issued a 40-page opinion ruling for us, upholding our positions that the statute was unlawful because it violated several provisions of the Home Rule Act and also the Antideficiency Act. He declared the Budget Autonomy Act null and void and enjoined the Council from doing anything to implement it. The Council took an appeal and it was argued in October. But before any decision, there was an election which, as you know, in my opinion, was heavily influenced by the US Attorney’s Office and Mayor Gray was not re-nominated by the Democratic Primary. After the general election, the new mayor, Muriel Bowser, came in and while the matter was pending, Mayor Bowser filed a motion suggesting that the matter was now moot because unlike the previous mayor she was prepared to implement the Budget Autonomy Act. And the panel of the Circuit Court of Appeals agreed that the case was moot, ignoring the fact that there was also another defendant who hadn’t changed and wasn’t going to implement it – that was the CFO. The Court of Appeals directed the District Court to remand the case to the Superior Court for dismissal since under the law a mooted case goes back to the court where it originally started. But when the case got back to the Superior Court, the Mayor changed her mind and her counsel claimed that what had been moot a few weeks before was now ripe for resolution. The matter was decided on the briefs without oral argument by Superior Court Judge Holman, who disagreed with Judge Sullivan on every issue and upheld the Budget Autonomy Act. I do not believe Judge Holman's opinion would withstand
appellate analysis. But the only remaining defendant, the CFO, who was appointed by the Mayor and confirmed by the City Council the two plaintiffs in the matter and who control his continuing in office, now declined to take an appeal of the decision. So we have a Superior Court decision upholding budget autonomy and a federal district court striking it down. But as I have pointed out several times, the law is still subject to collateral attack and future expenditures might be challenged by people adversely affected who are still free to challenge the legitimacy of the Budget Autonomy Act. So I don’t think the last chapter has been written in this matter.

MR. KRANTZ: Irv, I asked you a question about this because it seems to me that it raises several issues. One is that it may not be fully understood that there can be extremely complicated legal matters that an AG has to deal with. The second is that in your role trying to do what is right even though it is not popular can be a challenge in an environment where there is really a strong view about issues like budget autonomy in the District. Can you talk a little bit about how that played out for you and how difficult it was?

Mr. NATHAN: Well, it was a very difficult situation. In the first place, you know it’s against my personal political beliefs. I certainly want the District to have budget autonomy. In fact, I want the District to be a full state. I think it’s appropriate – the District is a larger, has a greater population than two states, Vermont and Wyoming. It’s a fully bustling jurisdiction and it has the attributes of a state for many purposes such as dealing with the Federal government on matters like education and Medicare and Medicaid. So I am a proponent of statehood and
certainly a proponent of autonomy for the District believing that when we
collect our local taxes we should be able to spend that money as our elected
representatives determine. So I philosophically agreed with that. On the other
hand, my job was to uphold the law and I think the Home Rule Act is
absolutely crystal clear that it was not the intent of Congress to give the
District budget autonomy. Of course, the proof of that pudding to me was that
for forty years after the adoption of Home Rule the representative to the
Congress from the District introduced legislation seeking budget autonomy
from the Congress, which is a recognition that that is where authority had to
come from. But Congress never did pass it. I was not subject to election but I
give Karl Racine great credit for supporting our legal position. He ran for AG
and in the campaign he was the only one of the candidates who said we were
right about this issue as much as he didn’t want that to be the case. That took
great courage, but the person who showed the most courage on this was Mayor
Gray who a) was a great proponent of Home Rule and b) was expecting to run
for re-election. He knew how unpopular this position would be but acceded to
the legal opinion of his AG that this was not lawful. He wanted to get budget
autonomy in a lawful way, from Congress. So this was a very difficult
decision certainly for me and people on my staff, but it was very clear that we
had to do what was lawful and not what was politically popular or desirable.

MR. KRANTZ: I’m aware of a number of other issues you had to confront. One role that the
Office of Attorney General plays is to defend the city when lawsuits are
brought in a variety of contexts and obviously this is an important role because
potential liability for this city is potentially significant with a limited budget. Could you talk a little bit about what concerns you with respect to how liability can be imposed now? Again this goes back to the relationship, to a certain extent, between the District of Columbia and the Federal government.

MR. NATHAN: We were tasked with defending all of the lawsuits that were brought against the District for damages, including, for example, police brutality cases by people who were shot by police or those otherwise injured by municipal employees operating buses or other city vehicles. Our approach was to analyze the merits of the lawsuits and where we could to try to settle on reasonable terms to compensate the people who had been injured by the negligence or misconduct of city employees. And we certainly settled a large number of cases on that basis. But where we thought the city was being wrongfully accused or when people were seeking to hold us up for great amounts that were not due, we defended those suits vigorously. We moved to dismiss those kind of cases, and if we didn’t succeed, we went to trial and we generally succeeded at trial in those cases that we thought were not meritorious. In those cases, we litigated hard on behalf of the city because again the client is the municipality and the residents of the city and it is their hard earned tax dollars that we were trying to preserve. I think we did a pretty good job of preserving those funds. There was one class of cases, I think you were referring to, Sheldon, that particularly galled me when I was AG because it resulted from a statute that the City Council had passed many years before when David Clark was the chair. It has turned out to be very detrimental to the best interests of the city.
That is the statute that says simply that anyone convicted wrongfully of a felony in the District of Columbia under the DC Code can sue the District for unlimited damages that were suffered during that period of incarceration. At the time that this local law was passed, the Federal government had a statute that provided very limited recovery, I think to $5,000 per year that any wrongfully convicted defendant could receive from the Federal government. That has been changed and now Congressional legislation provides such a person can receive $50,000 a year for every year of wrongful imprisonment. There was a situation in which there was a person who had been wrongfully convicted and Clark wanted to get that person properly compensated and he said he did not expect this would happen very frequently. The unfairness in this statute derives from the fact that the Congress from the beginning of time had decided that felonies in the District would be prosecuted by the U.S. Attorney’s Office. As a result, the District doesn’t have direct responsibility for making those decisions to bring felony prosecutions and because the U.S. Attorney’s office handles it the Federal agencies are often involved in the investigation. Obviously MPD is also involved in street crime matters in the District and they make arrests but the decisions on the prosecutions are made by the Federal government. When I was AG and following that, there was a series of cases where it turned out that defendants who had been prosecuted by the US Attorney’s office had been convicted on the basis of FBI hair analyses that turned out to be erroneous. These people had been convicted of very serious crimes – murders or rapes – by the Federal government, sentenced by
judges appointed by the president and confirmed by the Senate and sent to Federal institutions. When they were exonerated on the basis of recent DNA analysis, they were compensated by the federal government at the maximum levels set by Congress. Thereafter their lawyers brought lawsuits against the District under this basically no fault local law. So if they had been in jail twenty years the feds paid them a million dollars, $50,000 a year for twenty years. Let me make it clear this is a terrible injustice that is done and there definitely needs to be appropriate compensation but my point was that the appropriate compensation should have come from the people who made the mistakes and who sent them to jail. In many cases, these were FBI investigations with faulty forensic analysis and assistant U.S. attorneys who had made the decision to bring the cases and tried them in court. Under the DC law there was no offset for the amounts paid by the Federal government and unlike both the Federal government and almost every jurisdiction that I know of we have no cap on liability. The District has no cap on liability, no offset from the Federal government and no requirements that the plaintiff – the person who had been sent to jail – demonstrate that there was errors made by District of Columbia employees that led to their incarceration. Now sometimes that happens that MPD made some mistakes along the way and therefore it seems appropriate that the District should bear some responsibility. But where the District had no responsibility for the incarceration, it seemed to me quite inappropriate for the District to be on the hook for damages, but the courts, because the statute which is so clear and no fault is required, imposed
tremendous damages on the city. And in the last year to my knowledge the city has paid out over $50 million to these individuals, a lot of which goes to the attorneys who handle these cases on a contingency fee arrangement. I had urged the Council to make changes in that law but they were not interested in doing that. I think a major reason for that are the political contributions the trial lawyers bar make to candidates for local offices. I think that is an injustice that the District suffers.

MR. KRANTZ: And I think another illustration of the complex nature of the role that the AG of the District of Columbia has. Early on in this conversation you raised a question about the relative jurisdiction between the Office of AG and the US Attorney’s Office on criminal matters and I think you had indicated that you had some views on that. I’d really like to hear them.

MR. NATHAN: I have written articles on the subject. I think that the employees of the District of Columbia government have matured over the years and like other municipalities and other states, the District should have criminal jurisdiction as well as civil jurisdiction and not have all the criminal matters handled by the Federal government, which doesn’t necessarily have the same set of priorities as the residents or the government of the District. I’ll give you a recent example that is very disturbing to me. There was a situation of a private charter school called Options, where we did an investigation and found that the management of the Options school had set up a self-dealing situation in which they created a private corporation that they owned and ran to provide services to the charter school. And these insiders took tremendous amounts of money
which was city taxpayer dollars that went to the charter school, that then was siphoned off to this management company and used for the personal gain of the officers of the charter school. So we brought a civil action against those people, again because we couldn’t bring a criminal prosecution. The city did get a preliminary injunction against their continuing to utilize this operation but our suit to recover the funds was halted when the U.S. Attorney's office came in and said to the court we think this is a criminal matter and we want to stay the civil litigation pending our criminal investigation. Then several years went by and only recently the U.S. Attorney's office announced that it would not bring any charges in connection with this matter. During that entire time when they could have been conducting an investigation, and maybe they did, I don’t know what they did, the civil suit did not proceed. So now the Attorney General’s Office has to pick up that civil suit after these people have had a chance to dissipate those assets and move on. It makes it very hard to deal with the case now and that’s an example of the situation. It’s obvious that the U.S. Attorney’s Office has tremendous experience in handling these criminal matters, and I’m not suggesting that there ought to be wholesale changes right away but I think there should be a transition to the local elected AG for the prosecution of criminal felonies. I think it ought to start with those situations in which it is city money which has been taken such as in the Harry Thomas situation and the Options charter school situation where the city is the victim. It seems to me that in other places the cities and states and counties have that criminal responsibility. I think the District should have that responsibility, and
at least concurrent jurisdiction with the U.S. Attorney's office for those kind of cases. It will take time for the police to work with the AG office to develop this expertise and the relationship to do these criminal matters and then over time take over other criminal matters. But it doesn’t seem appropriate for the U.S. Attorney who has different priorities to have exclusive jurisdiction to handle all the criminal matters. Another good example is the laws on medical marijuana where the District and the feds have different priorities. We set up a regime to deal with that and when we did that we got letters from the Federal DOJ saying, we are going to watch you very carefully and we may shut down the whole program. They said we may prosecute people who are acting in accordance with District laws on this. There are a variety of issues where there needs to be, in my view, more autonomy for the District in these areas.

MR. KRANTZ: Now the last question I wanted to ask relates to the shift from an appointed to an elected AG. I’d be very interested in your views on whether you think the decision to change to an elective system is the right one.

MR. NATHAN: It’s a judgment call and I think it is a judgment for the residents of the District. It’s obvious that in a jurisdiction where we don’t elect many officials, where we have no senators and we don’t have a representative in Congress that has a vote in Congress that when our citizens are given the option of saying would you like to have your AG which is a fancy title for Corporation Counsel elected, they said “yes.” There are definitely advantages to having an elected accountable official, but there are drawbacks too. In most eastern cities, the corporation counsel is appointed by the Mayor and works closely with the
mayor. In a relatively small jurisdiction, like the District or major cities like New York, Philadelphia or Baltimore, it’s beneficial to have both the mayor and lawyer for the city rowing in the same direction. It was obvious from the moment that there was going to be an elected AG that there was going to be friction between the mayor and the AG because the mayor who may be interested in reelection is going to view an official who has won a city-wide election as a potential adversary in the next election. So there is that tension that is inevitable. It also changes in some measure the nature of the job. When I was there, my focus was internal, on getting the best people in the office, organizing it well, making the litigation judgments, doing the right thing under the law, and not being concerned with the politics. I think the elected AG has a lot of the same interests and I think the city is very fortunate to have Karl Racine who is a very responsible individual, and he is interested in those things as well, but a lot of his attention seems to me is external to the office. And his focus is more on visibility with the public. As the elected incumbent, he has to anticipate at least re-election as AG and maybe future other elective positions. So there are pluses and minuses. I was very fortunate, I thought, to have had the office at a time when we had independence from the Mayor but also an excellent relationship with the Mayor and the Mayor’s cabinet, who were confident that I was not going to be running against him some day. That may not be the same when you have an elected AG.

MR. KRANTZ: Any other comments or observations you would like to make now about the time that you had spent as the AG of the District of Columbia?
MR. NATHAN: I am very proud of the record that we developed there. One of the disabilities that we had in that office was that the District unlike the other jurisdictions is controlled by the Federal Antideficiency Act. The way that operated was-- we found out-- that we were not allowed to have any contingency fee arrangements with private lawyers which other jurisdictions have. Even the Federal government has as an exception to the Act which allows for contingency fee cases, but the exception does not apply to the District. We were faced with the situation in which contingency fee lawyers approached us, as they had other jurisdictions, to deal with these online hotel companies which were not paying their hotel taxes and had not paid their taxes for a long time. It would have been easy if we could have had contingency fee arrangements with these lawyers, but we weren’t allowed to do that, so we handled it on our own. And we secured a payment of over $70 million for the District based on the very hard work in litigation by our lawyers, including Bennett Rushkoff and Jimmy Rock and others. We were up against major law firms located in the District and we got a judgment and a large settlement from these companies. So we overcame a disability that we had as a District office and through hard work we secured a great victory. That amount is certainly greater than the local part of the budget of the AG’s office. I should also mention another major accomplishment that really relates to Home Rule, that is, getting the District out of a number of consent decrees that had existed for decades in the District. In several of these matters, the Federal government was essentially supervising basic city services, such as in the education area and mental health
areas. These were situations that cried out decades ago for some supervision, but in the interim and certainly in the recent administrations and the Gray administration, there were substantial improvements, and we did not need to have that kind of supervision. These consent decrees were very expensive because we had to pay plaintiffs lawyers and monitors. They also undermined Home Rule since the control of the basic operations of the District were under federal supervision. So in a number of those cases – mental health, transportation of special needs students and the oversight of St. Elizabeths – we were able to end those consent decrees during our time and lay the foundation for release from others. That took tremendous effort, working with members of the Gray administration, cabinet officers and officials as well as lawyers in the Office of the AG. We were very pleased with that. We had a number of other successes in dealing with issues in the District. One of them, for example, was preserving the Corcoran Art School and the museum through an arrangement with GW and the National Gallery of Art. So there were a number of successes we had during my tenure. But, as I have said, my greatest accomplishment was leaving to my successor a top-notch legal staff that I think has continued to do great work for the District.

MR. KRANTZ: The range of experiences you have had throughout your career are pretty extraordinary. Why don’t we turn now to what you are doing at the moment? You have now left as the AG, [Nathan: my time had expired!] What are your areas of focus now?
MR. NATHAN: I am back at Arnold & Porter where I started. I am not a partner, I am a senior counsel and I am handling some commercial matters there, including some matters that related to state attorneys general. When I was the AG of the District I was a member of National Association of Attorneys General and currently I am a member of SAGE, which is the Society of Attorneys General Emeritus. There are some issues that clients have dealing with State Attorney General’s offices in other jurisdictions and even in the District of Columbia, and I have been handling those matters as well as some other kinds of matters that I have handled before such as internal investigations. A lot of what I am doing obviously is in the pro bono world. One of the matters that I am pleased to be able to help out on is for an organization that provides college and graduate school scholarships to Native Americans and Alaskans. The organization was created by the Cobell Trust, which secured a large settlement as a result of litigation against the Department of Interior. My colleagues and I are serving as general counsel for the organization that provides those scholarships. As you mentioned at the outset, I’m also serving as the President of the Council for succeeding your partner Earl Silbert. I am really quite honored to be in a chair that was started by Charlie Horsky of Covington and Earl Silbert and other distinguished leaders of the Bar. It has been a fascinating experience. It’s a wonderful organization that focuses on what we can do to improve the administration of justice in the District and to work with lay people in private enterprise, practicing lawyers and sitting judges in both our local and federal courts to improve the understanding of the law and the
fulfillment of what we hope for in a just society. So for example I co-chaired along with Judge Katanji Brown Jackson, a federal District Court judge here, a wonderful and very bright individual – and a whole group of volunteers from the Council on how to improve jury service. We focused on how to make jury service more palatable to the residents of the District, how to improve the return of summons for jury service and make service on the jury a better experience for our citizens. We did a year-long study, and we met with past jurors and judges litigators and litigants, and came up with a set of recommendations, and are working now in a group headed up by Peter Kolker of Zuckerman Spaeder to implement those recommendations. Some will require Council legislation, and others may require court rule changes or changes in procedures in the clerk’s office. We also just recently concluded a study of the Office of Administrative Hearings to make sure that citizens get a fair and prompt hearing in administrative appeals in the city. We made recommendations to the City council and to the judges of OAH for improvement there. We did that pursuant to a contract we received from the city auditor, and we have a new contract from the city auditor to look at the issue of the relationship between the criminal justice system in the District and mental health services. So we have a whole set of very important issues, and we have a wonderful staff headed up by June Kress and we have great volunteers. I have spent a lot of time dealing with that and am very pleased to have this opportunity to continue to contribute my services to the District.
MR. KRANTZ: The last thing we were going to talk about was your views on what’s happened to the practice of law and legal profession over the last 50 years. Are there some observations you would like to make on the changes that have occurred and the ones you would like to see made?

MR. NATHAN: I’ll leave the future improvements to you, Sheldon. You wrote an excellent book on that subject and you are carrying it out and doing a great job in connection with the Affordable Law Firm to make legal services available to people who cannot afford the kind of commercial rates that are charged. But I can comment on the changes I have witnessed. First, I would say there is a similarity in that both when I started in the late 1960’s and now, there is a wonderful group of people who are going into the profession, very talented, very able lawyers with a lot of dedication to help people and to create a more just system.

On the other hand, there have been a number of changes since I started, not all for the better. One of the changes, of course, is the technology. When I started at Arnold & Porter in 1968 and there were about 50 lawyers there, we used carbon paper and manual typewriters and they had a procedure in which they circulated throughout all the lawyers in the firm carbon copies of all the correspondence and filings and briefs that had been written by the firm in the previous month. You would get these things in binders you didn’t really have time to examine, but they were there to let everyone know what everyone else was doing. In addition, obviously you made filings by hard copy and traveled to places to make the filings and had to get to the court before 5:00. Now, of
course, with technology everything is online and is done electronically. Even meetings with out of town lawyers can be done electronically without anyone travelling from their office. Because of electronics everything has sped up, which is both a blessing and a curse. That technology, of course, has changed the practice of discovery now. It is all about electronic discovery and emails that didn’t exist at the time. Obviously we didn’t have instant communication. You had telephone calls and telegrams and that was about it. So that’s a difference. And the difference in the massive discovery that comes from searching e-mails and electronic files is that litigation teams are much larger, and there is more drudge work for young associates. They sign up with big firms, paying large salaries because of the massive debt it takes to go to law schools, and they are often unhappy with their experiences at commercial firms. When I started, litigation teams were much smaller and one could get more interesting experiences earlier. Another major difference has come with journalism dealing with the legal profession. When I started there were not the publications that there are now, and those publications focus on law firms and law firm profitability. That did not exist and I think that has changed things. When I started, the premise was one went to a law firm and at least in DC it was likely if you did well you would stay with that law firm the full time of your career. It was the premise that your law firm would handle a lot of matters for the same client. Now clients pick and choose law firms or individual lawyers based on their specialties, and lawyers move from one law firm to another chasing the highest dollar. Loyalty both from the clients and
from lawyers to law firms obviously has been impacted by those changes. Clients now demand and firms provide more specialization. When I started, generalists were prized and I have enjoyed being a litigation generalist.

Another major change is that national law firms have opened large branch offices in D.C. When I started, a number of the large DC firms served as counsel to the clients of national law firms elsewhere handling their Washington problems, and then returning the client to the firms in other cities for all of their normal commercial work. Now the branch offices handle those Washington matters for their firm clients, and the DC firms have had to change their focus. When I went into practice, it wasn’t the expectation that you would make a fortune in law. Now it appears there are a number of folks who go in with great expectations of earning a lot of money in the law. There wasn’t the focus when I started on entrepreneurial skills. The notion was, at least at A&P – I can’t speak for all firms – but the notion was that there were a couple of rain makers who would bring in the business. The important part for a young lawyer was to do a good job and keep your nose to the grind stone and turn out good work and your reputation would hold you in good stead. Now we look for the entrepreneurial skills of new arrivals at the firm before they have had a chance to begin the practice. So there have been a number of those changes. It seems that is has moved into the direction of being less a profession and more of a business at major law firms. Still there are people and law firms that are dedicated to public service. Arnold & Porter has maintained its commitment to pro bono practice the entire time I have been there and like a
lot of firms in Washington there is still encouragement to allow their lawyers to do government service and then to return to the firm. As I mentioned earlier, I think that is a benefit both to the firm and its clients as well as to government agencies and the public.

MR. KRANTZ: Okay, we have come to the end of what has been a privilege for me to do, which is to interview you and record your personal history. Irv, you clearly deserve to be part of the oral history project of The Historical Society of the District of Columbia Circuit. So this has been a rewarding assignment for me.

MR. NATHAN: And it has been a great pleasure for me. I really appreciate it, Sheldon. It’s an honor to be interviewed by Sheldon Krantz who is a great lawyer in his own right. Thank you very much.
ORAL HISTORY OF IRVIN B. NATHAN

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Racketeering Influenced and Corrupt Organizations Act, Pub. L. 114-38, 62
Resume of Irvin B. Nathan
June, 2015
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EMPLOYMENT

Senior Counsel, Arnold & Porter, Washington, D.C. (January, 2015- present)

Attorney General for the District of Columbia (January, 2011-December, 2014) (Served as the chief legal officer of the nation’s capital, managing a staff of 700 people, including 350 lawyers. Supervised all civil litigation and appeals on behalf of the city; responsible for criminal prosecutions of juveniles and adult misdemeanants; issued formal legal opinions and provided advice to Mayor, Cabinet and Council on wide variety of legal issues; supervised contract, tax and real estate issues; supervised social service unit that enforced support payments from non-custodial parents to custodial parents; supervised general counsel of each of the Mayor’s agencies, including departments of police, fire, public works and education.)

General Counsel, U.S. House of Representatives, (November, 2007-December, 2010) (Appointed by the Speaker of the House and responsible for providing legal advice to leadership of the House, its members and staff and handling litigation where the official interests of the House or its members or officers were implicated, including U.S. House of Representatives v. Miers, (558 F. Supp. 2d 53, D.D.C. 2008) where the Court issued a landmark ruling that senior White House officials are not immune from House subpoenas)

Senior Partner, Arnold & Porter, Washington, D.C. (1994-2007) (Chair, White Collar Defense Department) (handled wide variety of complex criminal and civil litigation, including defense of CFO of World.Com in one of the largest financial scandals in the nation’s history; defense of a Clinton Cabinet officer in a preliminary investigation that aborted an independent counsel investigation; defense of a former Secretary of the Navy; representation of a U.S. Senator and his top staff in a Senate investigation; representation of Fortune 500 companies and their executives in grand jury proceedings, and representation of defrauded companies, including CBS Radio, Inc.) (In this period handled arbitrations for a world-wide accounting firm and served as a party-arbitrator for an international sports apparel company.)

Principal Associate Deputy Attorney General, U.S. Department of Justice (1993-1994) (served as top aide to Deputy Attorney General Philip B. Heymann, who supervised all 94 U.S. Attorneys, Director of the FBI, the Director of the Drug Enforcement Administration, and the Director of the Bureau of Prisons. Handled a variety of policy issues, including federal criminal legislation, international criminal assistance treaties, and relations with the defense bar.)

Litigation Partner, Arnold & Porter, Washington, D.C. (1981-1993) (handled wide variety of complex civil, criminal and administrative litigation and congressional representations, including civil RICO, securities, antitrust, and consumer protection matters. Successfully defended national law firm partner in multi-month criminal trial in federal court; represented City of New York in
civil RICO suit against tax defrauders; and served as special minority counsel to U.S. Senate Intelligence Committee in investigation of CIA Director.)

Deputy Assistant Attorney General for Enforcement, Criminal Division, U.S. Department of Justice, (1979-1981) (Supervised organized crime and racketeering strike forces across the country; supervised the narcotics and dangerous drug section and the appellate section, dealing with all federal appeals from convictions; supervised all of the ABSCAM prosecutions, which resulted in convictions of a U.S. Senator, six members of Congress and numerous local officials; and testified before Congress on an array of policy issues affecting the enforcement of the federal criminal law.)

Partner, Arnold & Porter, Washington, D.C. (1976-1979) (General Civil Litigation) (Handled a wide variety of federal and state civil litigations, including defense of securities and antitrust class actions; accounting malpractice cases; defamation suits; insider trading suits; breach of contract litigation; and defense of a family farm in a federal litigation against a major trade association.)

Associate, Arnold & Porter, Washington, D.C. (1968-1975) (wide variety of litigation, including antitrust defense, securities fraud defense, defense of agricultural importers before federal administrative agencies, intellectual property matters for computer manufacturers, general tort and contract matters, and defense of Commissioner of Baseball in federal litigation brought by major league team owner, Charles Finley v. Bowie Kuhn.)

Law Clerk to Judge Simon E. Sobeloff, United States Court of Appeals for the Fourth Circuit, (1967-1968)

BAR ACTIVITIES

Vice Chairman (2007-2008). D.C. Board of Professional Responsibility (member appointed by D.C. Court of Appeals, 2004-2008) (wrote published opinions on attorney discipline cases appealed from Hearing Examiners; heard oral arguments on appeals, and for two years presided over such oral arguments when Chairman was unavailable). (Opinions I authored are available upon request.)

Hearing Examiner, D.C. Board of Professional Responsibility (2001-2004) (presided over hearings and prepared findings of facts and conclusions of law in issuing recommendations that were appealable to the Board);


Fellow American College of Trial Lawyers (1997-present)

Member, American Law Institute (1994-present)

Member, American Bar Foundation (1995-present)
Member, D.C. Bar Committee on Civility in Litigation (1993-1996)
Chairman, Nominating Committee, D.C. Bar, 1990
Chairman, Ad Hoc ABA Committee on Independent Counsel Statute, (1985-1987)
Chairman, Committee on White Collar Crime, Criminal Justice Section, American Bar Association, (1982-1984)

EDUCATION
Columbia Law School, (1964-1967)
J.D., magna cum laude
Board of Editors, Columbia Law Review
Jerome Michael Trial Advocacy Award
Johns Hopkins University, (1960-1964)
B.A. Phi Beta Kappa.

CIVIC ACTIVITIES
President, Council for Court Excellence (2015-present); Member, Board of Directors (2009-present)
President, Frederick B. Abramson Foundation, (2004-2006); Board of Directors (2001-2006); (2015-present)
UDC Law School Foundation Board, (2008-2010)
Member, Board of Anti-Defamation League of D.C., (2009-2010)
Past Chair, Board of Trustees, National Capital Region, American Jewish Congress

HONORS
Visionaries in the Law Award, National Law Journal, 2009
Best Lawyers in America (1989-2009) (each year)

TEACHING EXPERIENCE
Visiting Professor, Hebrew University, Jerusalem, Israel (Spring Semester, 2015)
Adjunct Professor, University of San Diego Law School, (1990-1991)
Lecturer, Washington College of Law, American University Summer Institute on Law and Government (June 2010)

SELECTED PUBLICATIONS

ABSCAM: A Fair and Effective Method for Fighting Public Corruption, Chapter, ABSCAM Ethics, edited by Gerald M. Caplan, (May 1983);


Law Enforcement Against International Terrorists: Use of the RICO Statute, (with Kenneth I. Juster), 60 U. Colo. L. Rev. 553 (1989);


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FCPA Ruling Raises Serious Issues for Prosecutors, Counsel, Business Crimes Bulletin, June 2002;


The Thompson Memo Ruling: Recent Decision May Have Little Effect on Other Cases, (with Michael S. Lewis). *Business Crimes Bulletin*, October 2006;

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PROFESSIONAL EXPERIENCE

Visiting Professor of Law and Co-Director, Justice Lab, Georgetown Law Center. Courses include Professional Responsibility and Practicum on the Access to Justice Crisis. The Justice Lab gives emphasis to providing technical assistance and research support to access to the D.C. Access to Justice Commission and other entities on the frontlines grappling with unmet legal needs. Teaches courses on professional responsibility and access to justice at Georgetown. Academic year 2016-2017.

Executive Director, DC Affordable Law Firm (DCALF). DCALF was created by the Georgetown Law Center, DLA Piper and Arent Fox as a non-profit entity to provide low cost legal services to modest income D.C. residents who do not qualify for free legal aid but cannot afford the normal rates that lawyers charge. April 2015-December 2016

Distinguished Visiting Professor of Law, University of Maryland Carey School of Law. Courses include Legal Profession and Business Crimes. July 2011-2014.

Partner, DLA Piper LLP (US). Practice emphasized preventive and litigation services on corporate and white collar criminal matters. October 1990- June 2011. Also founded and served from 2006-2011 as Director of New Perimeter, DLA Piper’s global pro bono affiliate. Oversaw large scale pro bono projects in developing and post-conflict countries. In addition, served as president of the DLA Piper Foundation from 2006-2011.


Dean and Professor of Law, University of San Diego School of Law. July 1981-June 1989.

Professor of Law and Director, Center for Criminal Justice, Boston University School of Law. July 1970-June 1981.
Executive Director, Massachusetts Committee on Criminal Justice. State agency which was responsible for strategic planning on criminal justice. April 1967-June 1970.


SELECTED PROFESSIONAL ACTIVITIES AND AWARDS

Regularly designated as a Washington, D.C. Super Lawyer for services provided in white collar criminal defense.

Chair, DC Affordable Law Firm Board of Directors

Appointed Commissioner, D.C. Access to Justice Commission

2016 Justice Potter Stewart Award recipient by the Council for Court Excellence for contributions made to the law and the administration of justice in the District of Columbia

2011 recipient of Legal Times Champions Award for upholding the profession’s core values through public service, pro bono efforts, and advocacy for civil liberties.

2004 recipient of D.C. Bar Pro Bono Lawyer of the Year Award.

Former member, D.C. Bar Legal Ethics Committee.

Former Chair, American Bar Association Criminal Justice Section.

Lifetime Member. American Law Institute

Member, D.C. and U.S. Supreme Court Bars.

Member, California, Massachusetts and Nebraska Bars on Inactive Status.

SELECTED PUBLICATIONS


EDUCATION

University of Nebraska, Bachelor of Science of Law and J.D (Cum Laude), Editor in Chief, Nebraska Law Review.