ABE KRASH, ESQUIRE

Oral History Project
The Historical Society of the District of Columbia Circuit

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The Historical Society of the
District of Columbia Circuit

United States Courts
District of Columbia Circuit

ABE KRASH, ESQUIRE

Interviews conducted by:
Stuart F. Pierson, Esquire
June 6, August 13, October 16, November 7 and December 16, 2013

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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.

Indexed transcripts of the oral histories and related documents are available in the Judges' Library in the E. Barrett Prettyman United States Courthouse, 333 Constitution Avenue, N.W., Washington, D.C., the Manuscript Division of the Library of Congress, and the library of the Historical Society of the District of Columbia

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.

Standard Form

INTERVIEWEE ORAL HISTORY AGREEMENT

Historical Society of the District of Columbia Circuit

Oral History Agreement of [Name of Interviewee]

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, ABE KRASH, do hereby grant and convey to the Society and its successors and assigns all of my rights, title, and interest in the tape recordings, digital recordings, transcripts, computer diskettes, and DVDs of the interviews of me as described in Schedule A hereto, including literary rights and copyrights. All copies of the tape recordings, digital recordings, transcripts, computer diskettes, and DVDs are subject to the same restrictions herein provided.

2. Accordingly, the Society may duplicate, edit, publish in any form or format, including publication on the Internet, and permit the use of said tape recordings, digital recordings, transcripts, computer diskettes, and DVDs 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 tape recordings, digital recordings, transcripts, computer diskettes, and DVDs 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

Abe Krash 7/9/'14
[Signature of Interviewee] [Date]

SWORN TO AND SUBSCRIBED before me this 9th day of July, 2014.

Jane L.T. Vogt
Notary Public

JANE L. T. VOGT
Notary Public of District of Columbia
My Commission Expires January 14, 2019

My Commission expires: 1-14-2019

ACCEPTED this 4th day of September, 2014, by Stephen J. Pollak, President of the Historical Society of the District of Columbia Circuit.

Stephen J. Pollak
Stephen J. Pollak

Schedule A

Tapes recordings, digital recordings, transcripts, computer diskettes and electronic media resulting from three interviews of Abe Krash, conducted on the following dates:

Interview No. and Date	Number of Tapes or CDs	Pages of Final Transcript
No. 1, June 6, 2013	}	1-38
No. 2, August 13, 2013	}	39-72
No. 3, October 16, 2013	} All on one flash drive	73-118
No. 4, November 7, 2013	}	119-140
No. 5, December 16, 2013	}	141-169

The transcripts of the five interviews are contained on one flash drive.

Standard Form

INTERVIEWER ORAL HISTORY AGREEMENT

The Historical Society of the District of Columbia Circuit

Oral History Agreement of [Name of Interviewer]

1. Having agreed to conduct an oral history interview with Abe Krash for the Historical Society of the District of Columbia Circuit, Washington, D.C., and its employees and agents (hereinafter "the Society"), I, Stuart F. Pierson, do hereby grant and convey to the Society and its successors and assigns all of my rights, title, and interest in the tape recordings, digital recordings, transcripts, computer diskettes, and DVDs of interviews as described in Schedule A hereto, including literary rights and copyrights.

2. Accordingly, the Society may duplicate, edit, publish in any form or format, including publication on the Internet, and permit the use of said tape recordings, digital recordings, transcripts, computer diskettes, and DVDs 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 interview or the information contained therein until it is concluded and edited, or until I receive permission from the Society.

[Signature of Interviewer] [Date]

District of Columbia, SS
SWORN TO AND SUBSCRIBED before me this
14 day of July, 2014.

Notary Public

ELIZABETH I. McTIGHAN ★ NOTARY PUBLIC ★ DISTRICT OF COLUMBIA Exp. 06/14/16

My Commission expires: 6/14/16

ACCEPTED this 4th day of September, 2014, by Stephen J. Pollak, President of the Historical Society of the District of Columbia Circuit.

Stephen J. Pollak

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Oral History of Abe Krash
First Interview
June 6, 2013

This interview is being conducted on behalf of the Oral History Project of the Historical Society of the District of Columbia Circuit. The interviewee is Abe Krash, Esquire, and the interviewer is Stuart Pierson, Esquire. The interview took place on June 6, 2013. This is the first interview.

Mr. Pierson: It is June, 6, 2013 and I'm Stuart Pierson with the D.C. Circuit Historical Society and with me is Abe Krash who through the course of these interviews we will all get to know for his remarkable career in Washington, DC. And unless you have other introductory remarks Abe, I thought we would start with your birth and your childhood.

Mr. Krash: Well as Robert Hutchins, a former President of the University of Chicago, used to say, I was born in the usual way on April 26, 1927, in Menominee, Michigan. My father was a rabbi in an adjacent town, Marinette, Wisconsin. The hospital was in Menominee. He married my mother a year before, in 1926. My father was born in the village of Butrimonis in Lithuania, which was then a part of Russia, around 1890. We never really knew when he was born because he never divulged that to us. But I would say that he was born no later than 1890, and he grew up in Lithuania. We liked to kid him years later about all the amazing things that happened during the twentieth century. He didn't die until 1984. The world was revolutionized in his lifetime. In any event, he came from a family where his father, too, was a rabbi, and he came from a very religious background. He studied in seminaries in Lithuania, where he was ordained as a rabbi as a young man, and then he immigrated to the United States in the early 1920s. He was one of five children. Two of his siblings, a brother and a sister, settled in Chicago, and a third settled in Alliance, Ohio, and became a very successful scrap metal dealer. My father came with a twin sister to the United States. She had some kind of illness-- I

don't know what type-- but in any event, she was not allowed into the country, and he took her back to Lithuania before returning to the United States. She was subsequently killed by the Nazis during the Holocaust. My father settled first in Chicago, and then he became a rabbi in the small town of Marinette near the Wisconsin/Michigan border.

Mr. Pierson: Do you know why he would have gone from Chicago to Marinette?

Mr. Krash: He got a job as a rabbi there. Then around 1928 or 1929, he accepted a job as an assistant rabbi for a synagogue in Salt Lake City, Utah. He was very attracted to that because the University of Utah is in Salt Lake City, and he very much wanted to matriculate in an American University, which he previously had not had an opportunity to do. Upon arriving in Salt Lake City, he immediately enrolled in the University of Utah, and he ultimately got a master's degree in history. All his life, that was one of the things he had wanted to do. That was really the moment that changed his life. He greatly cherished that experience throughout his lifetime. He remained in Salt Lake City for five or six years, and then he was offered the position as rabbi in charge of a congregation in Cheyenne, Wyoming.

Mr. Pierson: Did he ever reflect on the Mormon experience when he was in Salt Lake City, Utah?

Mr. Krash: No, I don't recall that. But he did feel that the people in Salt Lake were very friendly and very cordial to him, and he liked being in Salt Lake, but he had this opportunity to go to Cheyenne. People are often amused that he went as a rabbi to Cheyenne, a small western town. What happened basically was that as

the Jewish migration from Europe came to America, most people first settled in eastern and Midwestern cities. Then, looking for work, many of them pressed westward to Kansas City and Omaha and particularly to Denver, where there was a very large Jewish community by the 1930s. In any event, by the time my father arrived in 1935, there was a thriving Jewish community in Cheyenne. It is the capital of the state of Wyoming and there was a large army base on the edge of the town, Fort Francis E. Warren, which was a quartermaster base. During World War II, it was very much expanded. Cheyenne is also the site of a big Union Pacific railroad repair yard, and it was the center for all of the surrounding ranches as a source of supply. At the time when my father came, in 1935, the country was in the midst of the Depression. The Cheyenne Jewish community consisted of somewhere between a 100 and 125 families, so it was a substantial Jewish community. Most of the Jewish residents were merchants. They owned clothing stores, sporting goods stores, pawn shops and liquor stores, and they were quite successful.

Mr. Pierson: Was his the only synagogue?

Mr. Krash: His was the only synagogue in the state. My father was a man of small stature, very soft spoken, very scholarly and studious. He would frequently say to me "Do you have a book in your hand?" That is the way my father spoke to me. In years later, one of the things that was sad for me was becoming aware that where I grew up there was marvelous mountain fishing nearby. My father knew nothing about that. In Cheyenne, he was very much welcomed by the Jewish community in his early years. But then what happened was that as many of the folks became more financially successful, they became more assimilated. The congregation when he became rabbi was orthodox; many of

the members were immigrants, but their children were less orthodox, less observant. My father spoke with an accent. He spoke fluent English, but he spoke with an accent. I think a number of the members wanted a different type of rabbi, who had greater social skills than my father possessed. Consequently, the congregation split into different factions. In 1944, my father concluded he was unable to heal the schism in the congregation, and he decided to leave Cheyenne to accept a position as rabbi of a congregation in New Castle, Pennsylvania. Then, after five years there, he became a rabbi for a congregation in Madison, Wisconsin, and thereafter in Farrell, Pennsylvania. Finally he was rabbi of a small congregation in Washington, DC before he retired in his late 70s in 1970.

Mr. Pierson: Which was the synagogue here?

Mr. Krash: It was called the Washington Highlands Jewish Center in Southwest D.C. It's now closed. My father had a very hard time throughout his life. Basically, during his lifetime there were tremendous transformations going on in the American Jewish community. There was great tension within many communities between the more observant and their children who were less observant people. It was a very tough time for many of the orthodox rabbis, who struggled to reconcile the conflicting views. One thing my father had was this great love for learning and books. He always wanted to obtain a doctorate, and he took advanced courses in New York and in Israel in an effort to achieve that goal.

Turning to my mother, her name was Florence Kaplan. My father married her in 1926. She also came from a family of rabbis. She was living at the time he

married her in Duluth, Minnesota. How he came to know about her, I don't know. She was one of eight children. There were six sisters and two brothers. I think she was the second oldest.

Mr. Pierson: Had her family been in the states for a while?

Mr. Krash: Yes, I think they had been here for several years when my father met her. My mother went to high school here. She was a very intelligent, a very bright woman, who, unfortunately, never had the opportunity to get a college education. She spoke five languages and taught children in the Hebrew schools where my father was rabbi. Unlike my father, who was very quiet and very reserved, my mother was vivacious, very outgoing, very warm. She was very supportive of her family. When we came to Cheyenne, which is where I grew up, I was seven or eight years old. I skipped second grade and entered the third grade and then completed the rest of my public school education there. Cheyenne, at that time, was a community of approximately 25,000 people. You have to remember that Wyoming had only been a state for about a half century at that time. It was very much the west.

Mr. Pierson: Did you have any Indian or Mexican classmates there?

Mr. Krash: I had no Indian classmates. However, I had one or two Mexican classmates.

Mr. Pierson: Were there Indians on the reservations?

Mr. Krash: The Indians were on the reservations. We didn't see them until Frontier Days, which was a famous rodeo that took place every summer during the last week of July, and then Indians were brought into the city for that event. In the high school I attended, Cheyenne Senior High School, I was very fortunate in that the principal was a man by the name of Karl Winchell. He was very

supportive of me. I was the editor-in-chief of the student newspaper, *The Lariat*. I also was the Wyoming state oratory champion. A lot of the reason I had contact with Winchell was because at the beginning of the 9th or 10th grade, I began to write articles for one of the two daily newspapers in Cheyenne. One was called *The Eagle,* which was a morning newspaper; the other was called *The Tribune,* an afternoon newspaper. They were both owned by the same man, a man by the name of Tracy McCracken. I reported on high school sports events. One thing led to the other. During World War II -- now I'm talking about 1941 to 1944, the papers' sports editor had gone off to fight. High school sports were important in a small town like Cheyenne, so I began to write these stories about the high school football and basketball games, and, pretty soon, I was writing more and more stories. I would go down to the newspaper office after school, and after a while they gave me a desk and a typewriter. I learned how to type with two fingers. I was writing more and more. To make a long story short, when I was in about the 10th or the 11th grade, they made me the sports editor of *The Eagle* morning newspaper. Every day after school, I would rush down there and write a half a dozen articles. I had a sports column with my picture on it. I would cover the high school sports events, and a few University of Wyoming events. What was quite wonderful was that I was around reporters at the newspaper and getting to know them and getting to know what a newspaper was like. McCracken, the owner, later, became famous in the pictures of President Kennedy's nomination to be President at the Democratic Convention in 1960, when Wyoming was the state that pushed him over the top. McCracken is the fellow in the picture shown voting for Kennedy that confirmed his nomination.

Mr. Pierson: He was the head of the delegation.

Mr. Krash: I believe he was the head of the delegation. I'm not sure that he was head, but he was a very passionate Democrat and an alumnus and very strong supporter of the University of Wyoming. He wanted me to go to the University of Wyoming, which I didn't do. But this experience with the newspaper was a very valuable one because I learned to write under pressure. In going to sports events, I had to immediately come after the game to the office and write the article for the morning paper.

Mr. Pierson: Was the University of Wyoming in Cheyenne?

Mr. Krash: No, It was in Laramie, which is about 40 miles away. Actually, it was quite a ways away in those days because of gas rationing.

Mr. Pierson: Did you drive to it?

Mr. Krash: You could drive, if you were lucky. On Saturday mornings in the autumn, there was a train which would take people over to the football games. I didn't cover the University's football games. McCracken owned many newspapers throughout Wyoming as well as the radio station in Cheyenne. I became a sports broadcaster too. I was broadcasting the high school games. I began to learn to be a sports broadcaster. As I said, writing a lot of articles under pressure and being around newspaper people every day, I began to learn what the newspaper trade was all about.

Mr. Pierson: Did they give you basics on what an article should be like?

Mr. Krash: Oh, yes they did. The city editor and the other reporters were extremely nice to me and very supportive and encouraged me.

Mr. Pierson: Get it all in one paragraph?

Mr. Krash: Oh yes, like "what, when and how". I learned as well how to make up the layout for the sports page. I also remember being in the newspaper office on the Sunday of Pearl Harbor with the teletypes flashing. In high school, for whatever reason, I kind of blossomed. I had been kind of restless and erratic in junior high school, but in high school I blossomed. Particularly, I think, because Karl Winchell, who was a father figure for me in all kinds of ways. If I got out of line, he would really reign me in. He would read me the riot act.

Mr. Pierson: What was your mother and father's influence?

Mr. Krash: Well, my father was greatly puzzled by all of this. He never went to any of the high school games. He didn't know what the devil I was doing. But he was rather proud of the fact that every morning there was the newspaper with my byline and my column. It was a nice thing, and I think he took a lot of derivative pride in it, as did my mother. But my father wouldn't know the difference between a baseball and a football. He just didn't go to any of the games. Here I was running off covering all these football and basketball games. He was very encouraging and supportive, but a little puzzled by all of it. What he was mainly interested in was what kind of grades was I getting and what was I studying. That was the primary concern for him.

Mr. Pierson: And your mother?

Mr. Krash: My mother was very supportive of everything I did. She was very encouraging and backed me up. Cheyenne was a community that was very open and tolerant on the whole. There was prejudice, no doubt about that. For example, there was only a single country club in town, and no Jewish person would be admitted to the country club. Another example was the Frontier Days Committee, which consisted of a group of business men who ran the rodeo.

You would never see a Jewish businessman in that group. But I experienced very little prejudice or discrimination. Some of my friends were part of a social group from which I was excluded, but as I said I was the editor in chief of the high school student newspaper. I was on the debate team. I won the state oratory championship and there were many, many good teachers who were very encouraging in high school and supportive of me. Particularly, I recall an English teacher, a Miss Gibson, who was excellent, and a debate coach, Miss Rice, who was very supportive.

Mr. Pierson: Did you take a foreign language?

Mr. Krash: I took Spanish one year. My regret in retrospect was that I was primarily interested in humanities, and I should have been more interested in math and science. The educational system was probably not the same caliber that one would get in a high school in a big metropolitan area, but it was reasonably good. The teachers were supportive and they were very encouraging. I certainly had lots of chances to do all sorts of things.

Mr. Pierson: How about your brothers and sisters?

Mr. Krash: I have a sister and a brother. My sister was born a couple of years after me in Salt Lake City. Her name is Hadassah. She later became a teacher. She studied at the University of Wisconsin and she became a teacher in the New York Public School System, where she taught for a quarter of a century. Afterward, she went to Israel and lived there for 10 or 15 years. She lived in Jerusalem. Her daughter served in the Israeli Defense Forces, went to college there, and later moved back to the United States for graduate school at Columbia University. She is now a professor of political science at the Maxwell School at Syracuse University. I also have a brother, who was born in Salt Lake City 4

or 5 years after I was born. His name is Esomor. Subsequently, he went to the University of Wisconsin. My father was a rabbi in Madison during the time my brother went to school there and afterward. That's why my brother went to school there. My brother subsequently owned and managed a press clipping service in Washington, DC for many years. He then retired to Hawaii. He now lives in Richmond, Virginia, with his wife Elliott. He has one son, Ethan, and two grandchildren, who also live in Richmond.

Mr. Pierson: What were your brother and sister doing in school while you were there? They were behind you?

Mr. Krash: They were behind me. Yes, of course, my sister was 2 years behind me and my brother was 4 or 5 years behind me.

Mr. Pierson: What was the influence of the war?

Mr. Krash: I vividly recall being in the offices of the newspaper on the day of December 7th. I remember sitting at home listening to the radio. I used to listen to the music program around 1:00 p.m., and they were breaking into it announcing the bombing of Pearl Harbor. I rushed down to the newspaper office-- it was just seven or eight blocks away from our house-- and the office had been open because they wanted to put out an extra edition. Remember, there was no television in those days.

Mr. Pierson: Was there a ticker?

Mr. Krash: There was an AP ticker. There was indeed. There was a cubicle where the AP ticker was and you could hear the bells ringing. The ticker would ring 10 times for a flash. I remember being in there when the AP ticker would go off and they were publishing

an extra edition.

Mr. Pierson: Did you write any of those editions?

Mr. Krash: No I didn't. The articles were all coming off the ticker tape. The effects of the war on Cheyenne occurred, first of all, at Fort Warren, which became an enormously expanded quartermaster base. My father became, in effect, a chaplain. They called on him because there was no Jewish chaplain at Fort Warren, and they asked him if he would conduct services for the soldiers. My father was delighted to do that. Soldiers were in our home frequently during the war requesting all kinds of assistance. I remember one wintery morning, they wanted my father to meet a troop train coming through Cheyenne. I remember my father waking me. They sent a car to our house and drove us to the train, which was on a siding outside the city. I remember my father went into the railroad coaches, and I followed him. There were quite a number of Jewish soldiers and he conducted a morning service for the soldiers. They were on their way to the west coast. As I said, soldiers were frequently at our house seeking my father's assistance in getting their girlfriends out there, getting married or helping them get assigned, or if they were having some kind of emotional or spiritual problems. My father was very much involved in that during the war. Fort Warren was right on the edge of the city. I could get on my bike and go there because it was only four or five miles away. It was right on the edge of the town. For the soldiers, Cheyenne was the place to go for shopping, recreation, or visiting bars. The war really greatly stimulated the Cheyenne economy and changed the whole culture of the town.

Mr. Pierson: In what way?

Mr. Krash: Well, in all ways. There were thousands of soldiers in the Cheyenne community, and many of the business owners became wealthy as a result of the soldiers shopping for their families and girlfriends. The war affected us in many different ways. First of all, people's cars were jacked up in the garage because there was gas rationing and you couldn't go anywhere. Gas rationing was very stringent and food rationing was also in place. There was a Japanese relocation center in Wyoming, which I knew nothing about at the time. The high school instituted an ROTC program which was run by a former army colonel, who was a very able and effective guy. My classmates and I were too young to go into the service. We were in our mid-teens. I would follow the war every day by being in the newspaper office and talking to other folks in the newspaper office and reading the papers. But, physically, the war was quite remote. We were not like cities on the east or west coasts. My wife told me that on Long Island, where she lived during the war, they had black outs and air raid drills and had to cover their windows at night. My father, particularly, followed it very intensely and wanted to listen to the news each and every day. He'd listen very carefully to find out what was going on in the war.

Mr. Pierson: Were there any Japanese or German citizens in the town?

Mr. Krash: I'm sure there were some persons of German descent. We had one or two Japanese students at the school. As far as I know, nobody in any way, treated them badly. There were various war time collections such as cans, aluminum foil, and things of that sort that I remember. There was no question that the war

impacted us and affected our ability to travel. Everybody had ration books. There were very limited supplies of certain common items. But the war was still quite a distance away. Except that there were soldiers all around us at Fort Warren.

Mr. Pierson: Was the U.P. the only railroad?

Mr. Krash: I believe the Burlington went through Cheyenne also. The Union Pacific was the transcontinental railroad that went through Cheyenne, west through Rock Springs, Salt Lake City and to the Coast. There was a major Union Pacific railroad repair shop in

Cheyenne. One of my friend's fathers worked for the railroad. The railroad was very much a part of the city. The other significant part was the state Capital, and I became friends with the son of the Governor. But you have to realize that Cheyenne was a small town. Cheyenne was a town of about 22 to 23 thousand people except for the influx of soldiers. But basically a small town.

Mr. Pierson: You knew many of the people of your age.

Mr. Krash: Oh yes, I knew many of the people of my age. Particularly, because I was the sports editor of the morning paper.

Mr. Pierson: Everybody wanted to know you.

Mr. Krash: They wanted to know me. Naturally, the athletes wanted to know me because I was writing about them almost every day, five days a week.

Mr. Pierson: Did any of those athletes go on to distinguish themselves later?

Mr. Krash: The University of Wyoming won the National Collegiate Basketball Championship in 1944. One of the players was Ken Sailors, who was from our high school. They were really nutty about basketball at the University of

Wyoming, and they had very good teams. My high school basketball team won the state championship for two years. The last two years I was in high school they were very excited about the state championship. I didn't play on any of the varsity teams. I wasn't good enough and I wasn't big enough to play. I was covering it.

Mr. Pierson: Was basketball your favorite sport?

Mr. Krash: Yes, it was. I also played touch football on weekends with friends. I would play softball; I use to play a little tennis, but I wasn't any good at it. Basically I was a sports writer; I was covering sports stories in my junior and senior years of high school. *Esquire* magazine decided to pick a player in each state to have an east-west baseball game in New York City and they picked one player from Wyoming.

Mr. Pierson: High school All Stars?

Mr. Krash: Yes. As a sports writer of Cheyenne, I was invited to come. I went to New York.

Mr. Pierson: What year are we in right now?

Mr. Krash: 1944. For me the excitement was going to New York. The big city for us was Denver. Denver was only 100 miles away, but far away at that time because of gas rationing. I remember going to Denver when the University of Wyoming played basketball and I broadcast the game. I went to Denver, for example, for a big regional debate championship event, which was at Denver East High School. But it was not a readily accessible place during the war years because of the gas rationing.

Mr. Pierson: So when you went to New York for this All Star game, were you there for a weekend?

Mr. Krash: No, it was for more than that. It was for about a week I would say.

Mr. Pierson: You took the train back?

Mr. Krash: I took the train back and forth. However, I did go on a plane once. My first plane trip was to the state oratory finals in Casper. I went there to speak. I won the state oratory championship there. I believe I flew home from there. That was the first time I flew. The war impacted us tremendously and really constricted us. We could barely get around.

Mr. Pierson: So when you went to New York and you were there for a week, did you happen to see the city and what was it like?

Mr. Krash: It was a shock. Denver was the largest city I had previously visited, and in the 1940's it was not a big city as it is now. I was stunned by the bustle and liveliness of New York.

Going back to the experience of being Jewish and growing up in a small town like Cheyenne, as I've said, I did not experience much discrimination. There were some very amusing incidents. My brother, when he was about 7 or 8 was given an Irish Setter puppy. A neighbor had an Irish Setter who had a litter and gave my brother a beautiful little puppy, which my brother brought home and displayed to my father. My father came from a background in Europe where dogs were associated with peasants, and no rabbi would have a dog in his house. He said you are not permitted to keep it. He said we could keep it two weeks and that's it. During the next two weeks, the dog got bigger and we became fond of it. To make a long story short, my father allowed us to keep

it. He, himself, became very fond of the dog. However, he did not wish to be seen with it by members of his congregation. He would walk the dog at night in the winter. During the wintertime in Cheyenne, it is bitterly cold. But he would walk the dog and the dog would sit with my father in his study when he was preparing his sermons. He became very fond of it.

Mr. Pierson: What was the dog's name?

Mr. Krash: We named the dog Flash. He was a beautiful Irish Setter. My mother was very fond of him also. There was a very funny episode involving the dog. There was a meeting in our home involving some dispute in the congregation. Some rabbis from Denver came to our home and joined the Trustees of my father's congregation in our living room. My father warned us in advance that the dog must be kept out of sight. So Flash was placed in the back bedroom. However, somehow he got out and immediately raced into the living room where all these people were present. Flash raced towards my father, who of course, pretended not to know him. He said it was some neighbor's kid's dog. We laughed about it later, but it was kind of embarrassing for him. The truth is that the Jews and our family were in many ways an alien group in the larger culture in Cheyenne. My father never really connected with that larger culture.

Mr. Pierson: But you did.

Mr. Krash: Yes, I did through my school. My father lived on the edge of the community in truth. Things like going fishing, horseback riding, I didn't do because, to my father, those things were strange or alien. My memories of my father were of him sitting studying.

Mr. Pierson: So you are out in the West in Wyoming and there is a lot of beautiful country around you. Did your sister and brother get out in the country?

Mr. Krash: No, they didn't. I repeat, it was for a variety reasons. Cheyenne is not a particularly interesting geographical part of the state. Laramie is a beautiful and interesting part of the state. The most interesting part of Wyoming, probably, is around Jackson Hole and Yellowstone. There were ranches all around Cheyenne. The kids from the ranches would come into town on school buses. I don't ever recall going to a ranch, though. I was friends with the children of ranchers and farmers, because there was only one high school and I got to know them. But I knew nothing about their lives, and I was never invited out there so I knew nothing about that. I grew up in a small western town, but I was part of the culture only in a very peripheral way. Years later, I worked with Judge Arnold, who grew up in Laramie, and who really reflected the western culture. He had this kind of openness, irreverence and antiauthoritarianism. He absorbed the western culture more than I did.

Mr. Pierson: What about your classmates in high school, did they have any aspirations to go to college?

Mr. Krash: Yes they did. Almost all of them went to college. Very few remained in Cheyenne, because there was basically nothing for them to do there following their graduation. One of my best friends, Peter Hanson, became an architect and then a professor at the University of Wyoming. He was a very close friend of mine. Another friend went to the University of Colorado, which was a very prized school to go to in my time. McCracken, the publisher of the newspaper, wanted me to go to the University of Wyoming, from which he was an alumnus. But, Karl Winchell, principal of my high school, said "Go east young

man". One of the main reasons I went East upon finishing high school was because of the influence of my mother's youngest brother. He was the star of the family; his name was Abraham Kaplan. He had gone to the University of Chicago in the late 1930s as a graduate student. He was taught by many distinguished professors at Chicago, including Bertrand Russell, who was there at the time. He later became Chairman of the Department of Philosophy at UCLA and, afterward, he was a professor of philosophy at the University of Michigan. Abraham Kaplan was a distinguished teacher. He was named by *Time* magazine as one of ten best university teachers in the country. When I was a young man, he was already renowned in the family as being a brilliant guy. Since he had attended the University of Chicago, that was obviously the place to go. If someone said to me "have you considered going to Yale or Harvard, or Michigan," I would have responded that I knew nothing about those schools. My world was very limited and closed in. All I knew was that Karl Winchell said you should go to an eastern university, and the University of Chicago was fine. As I said, the war was still on, but one would not get drafted until one was 18 and I was only 17 when I graduated from high school in June of 1944. I did well in high school. I was considered to be among the best students. I received lots of honors from the school because I was editor of the student paper and a champion orator. At the end of June 1944, my father left the congregation in Cheyenne and become the rabbi in New Castle, Pennsylvania. I applied to the University of Chicago. Because of the war and my being a fellow from Wyoming -- I am sure there were very few applications from Wyoming-- it was not a big deal to get admitted.

Mr. Pierson: With a recommendation from Karl Winchell I'm sure.

Mr. Krash: Oh yes, I received all kinds of recommendations. Anyway I sailed into the

University of Chicago. It was very different from my children and grandchildren's experience of the admissions process. It was a different world.

Mr. Pierson: So when did you arrive in Chicago for the first time?

Mr. Krash: During the fall of 1944, after my family moved to New Castle, Pennsylvania, and I moved with them. I remember we took the train from Cheyenne to New Castle. My family rented an apartment there, and I was with them. In September, 1944, I went off to college at the University of Chicago without the slightest idea of what I was going to get into or what it was like.

Mr. Pierson: Had you been to Chicago before?

Mr. Krash: No I had not. I remember going with my mother to the train station in New Castle to go to Chicago. This was a kind of great adventure for me. I was off to Chicago.

Mr. Pierson: Any of your high school classmates there as well?

Mr. Krash: No.

Mr. Pierson: You did not know anyone at the University of Chicago?

Mr. Krash: I did not. Some of my father's family lived on the North Side, but I was on the South Side of Chicago in Hyde Park. They were way off on the North Side, so I really knew no one. I was 17 when I arrived at the University. This was the era of Robert Hutchins. He was president of the University. It was war time. The college at the U of C in those days began in the 11th grade and took many 11th graders as freshmen. I came as a high school graduate, which meant that I could complete the college in two years. They had placement examinations to determine where you should be slotted. I took the array of placement

examinations and was admitted as a conventional college freshman. I went to live in one of the residence halls. It was called Burton Judson Court. All over the campus the war was very much of a reality. There were various buildings in which armed guards were posted. You have to remember that a lot of the atomic research was going on at the University of Chicago. I'll tell you about it later. At any rate, the reality is that I knew nothing about what I was going to get into when I arrived. I didn't have the foggiest idea. All I knew was that I was going to college. But I didn't have any idea about what college or the University of Chicago was like.

Mr. Pierson: Did they have courses that you had to take?

Mr. Krash: Everything was mandatory. You had no electives at all for people like me. There was a program that was prescribed for students like me for their first two years in the college. I took the required courses in humanities, social science, biological science, and physical science. Then the second year you took advanced classes in these subjects. The second year I also took a course entitled Observation, Interpretation, and Integration. It was essentially an introduction to philosophy. The U of C was a great culture shock for me. It was a truly spectacular place. Nearly all my classes were small discussion groups. There were some supplemental lectures, but basically we were in small discussion groups. We did not have text books. We read only original books. They were the great books. You would read and come to class of 25 students and we would have a discussion. That is the way we were taught. There were no exams except at end of the year. It was called a comprehensive exam. Everything was prescribed. Everyone took the same courses regardless of

whether they were going to be a doctor, physicist, engineer, or whatever, we were all taking the same courses.

Mr. Pierson: Very much like the English system.

Mr. Krash: Yes, except probably not as demanding as the English system. The emphasis was on learning how to think. It wasn't to cram you with facts, but learning how to think. I'll give you an example. In this course called Observation and Integration, we read things written by Plato, Aristotle, Thomas Aquinas, Hobbes and various philosophers. I remember going to one class and the professor spent the entire hour just going over one short paragraph by Aristotle asking us to explain what was going on, and he would say, "Okay Mr. Kaplan, What is going on here?" What he was trying to get us to see was how Aristotle was making distinctions. We were learning how to read very carefully. That was one of the main things they were teaching, and also to think through an argument very carefully. The professors at the University of Chicago were really extraordinary. During my social science class the second year, the instructor came to class and introduced himself as David Riesman, who later became a famous professor of sociology at Harvard, a very distinguished person. Daniel Bell was another professor. We were required to take a physical science survey course, and one day I walked into a lecture of about a 100 students. The professor was Enrico Fermi, the famous physicist and winner of the Nobel Prize.

Mr. Pierson: Did you understand who he was?

Mr. Krash: I didn't have the foggiest idea who he was.

Mr. Pierson: Your second year?

Mr. Krash: This was my first year. I went to a biological science class and the

instructor was nice to me. She put me in a kind of honors section. The Professor was Ralph W. Gerard, who unbeknown to me, was a world famous neurophysiologist. I mean just a spectacular teacher and professor. Another professor was Frank Knight, who was a very famous professor of economics. He lectured to us. Many of the famous professors in the University, people holding chairs, taught in the college. That was a tradition at Chicago. There was an intense intellectual atmosphere, there is no doubt about that. For the first time, I was encountering students very superior to me. One of the students who lived in the dormitory with me was George Steiner, who later became a renowned literary critic. Another contemporary was James Watson, who together with Crick, discovered DNA.

Mr. Pierson: Francis Crick?

Mr. Krash: Yes. The two of them won the Nobel Prize.

Mr. Pierson: So you have an extremely high level of students and teachers. How did that strike you personally, did you feel out of your depth?

Mr. Krash: I didn't feel I was out of my depth, but I knew I had to work hard, and I came to realize that there were a lot of very bright guys around there who were better educated than I was. They came out of better high schools than I did, had a better preparatory education than I did, and they were more gifted than I was. But I rapidly made friends and I learned a lot from being around them during the bull sessions. They were really bright and interesting people.

Mr. Pierson: What was Enrico Fermi doing there?

Mr. Krash: He was a professor of physics engaged in atomic research. I'll tell you a story about that in a few minutes; my experience with that. A very amusing story.

Many of the courses were taught superbly. Certainly one of the greatest courses I had was called Observation, Interpretation and Integration. It was taught by a man by the name of Joseph Schwab. He was a renowned Socratic-type teacher. He was one of the best teachers I have ever encountered. Schwab was a legend of the University of Chicago. As I said, what he was really trying to do was to teach you to read with precision, how to think with care and logically, and how to structure an argument. The social science courses were eye opening to me. I was beginning to read about people I had never heard of. We were reading great books in the humanities and social sciences. I thought I had read a lot before coming to Chicago, but my eyes were being opened to the kind of things we were called upon to read and discuss.

Mr. Pierson: Did you have any Shakespeare?

Mr. Krash: I don't recall. I think maybe in the second year, we may have read one of the plays. I don't remember. We had a course in poetry where we really read poetry with great care. There was a professor who taught Humanities. His name was Elder Olson. He later became famous as a literary critic, and I treasure him as a great teacher. I remember we were in a class talking about Plato's Republic and somebody said they had found a logical fallacy. Olson replied, "Explain it to me." He said, "Let me tell you something; I have read the book 55 times and I never found a logical fallacy, and I don't think anybody in history has." It was a very challenging kind of atmosphere. It was intellectually exciting and we were caught up in it and I enjoyed it enormously.

Mr. Pierson: So when you get to the end of your first year, do you go back home?

Mr. Krash: I did go home to New Castle. But first, let me tell you something else that

happened during my first year in the College. Shortly after I got to Chicago, I went to work on the student newspaper. It was called *The Maroon.* I showed up at the newspaper office. I had a lot of experience compared to the other students showing up there. I had three to four years' experience with *The Eagle* newspaper in Cheyenne. It was wartime, and the older guys were gone. Anyway, the only people there were either very young or not eligible for the service for one reason or another. So I started to work for *The Maroon.* In mid-winter, the guy who was editor-in-chief of the paper announced that he had to leave the University. In any event, the post for that position became open. I was selected to become editor-in-chief of *The Maroon,* even though I was just a freshman. I repeat, the atmosphere was unusual; it was wartime. *The Maroon* was a weekly newspaper, and I immediately set out to reorganize it. I put a lot of time and energy into doing that. It was challenging and exciting to me.

Mr. Pierson: Did you have a Faculty Advisor?

Mr. Krash: No, there was no Faculty Advisor. There was a University Director of Public Relations, who was kind of a mentor. And, I'll tell you a story involving him. He told me when I became editor that there were a few things we must not mention in *The Maroon,* especially anything going on in several of the University buildings. He didn't tell me what was going on in those buildings, and I didn't ask. We really had no faculty advisor. The paper was very independent. I had a very close friendship with a fellow who was the business manager of the paper. His name was Alan Strauss. He and I became very good lifetime friends. There were a number of other people that I became good friends with. I tried to change the format of the paper and expand its coverage,

but there were various limitations due to the war. Nevertheless, it was exciting.

Mr. Pierson: Limitations on newsprint?

Mr. Krash: Well, it was eight pages. We published every Friday. But what I was thinking of had to do with the content. Earlier I mentioned that I had a class with Enrico Fermi. What happened was this. It became kind of a famous incident. I asked one of the reporters on the paper to write a story about one of the professors. We were writing a faculty profile each week. So I asked her to write a profile about Arthur Holly Compton, who was the Chairman of the Division Physical Sciences. That is what I knew him as. Unbeknown to me, he was also the Chairman of the Manhattan Project in Chicago, but I didn't know that. I said to the reporter, "Let's do an article on Arthur Holly Compton." She went over to the University's Public Relations office and looked through the files and wrote this article. The paper came out on Friday, and we had an editors' conference at *The Maroon* offices on Saturday morning. I went there after breakfast on Saturday morning, anticipating a meeting with my fellow editors to plan for the next week's issue. While I was there, I got a phone call and the person at the other end of the phone said "I am Major so-and-so with G2, military intelligence, and I would like to come and talk to you." I thought it was a gag by one of the fellows in the dormitory, teasing me about something. I said, "Oh, sure" and hung up. To my great surprise, about a half hour later, two guys with trench coats showed up at *The Maroon* office. One of them took out of his pocket an ID showing that he was, indeed, a major in the Army. He introduced his colleague, who was a Lieutenant. He said they wanted to talk to me. So we went into my very tiny office. The Major said, "We need to talk to you because *The Maroon* has just committed a serious breach of the security regulations." I

had never heard of security regulations. He said he was concerned about what had happened not recurring. I stressed that I did not understand what he was talking about, and that it would be difficult to prevent a recurrence if we didn't know what we had done. He told me he had arranged for me to talk to the Dean of Students, whose name was Lawrence Kimpton. I had seen a lot of Kimpton in my capacity as editor of *The Maroon.* The Army representative said he wanted me to talk to Kimpton on Monday. **In** the midst of this, while we're talking, the circulation manager poked his head into the door. He said, you'll be pleased to know that the paper was sold out yesterday. You didn't pay anything for *The Maroon.* It was placed in piles at various places throughout the University where there was a lounge or cafeteria or other gathering place. **In** others words, it was circulated all over. I remember the major cleared his throat and said, "Well, I have to tell you that we, that is the Army, went around the campus last night and picked up every single copy of *The Maroon* that we could find and we also went to the printer and destroyed the plates." The major went on to say, "We want you to talk to Kimpton on Monday."

On Monday morning, I went to Kimpton's office to see him. I remember it was late April, a bright, sunny day in 1945. The war in Germany was coming to an end. I was sitting in Kimpton's office. He had a copy of the Friday *Maroon* on his desk. He said, "You gave some of us here in the University administration an anxious weekend." I said, "You know these Army fellows came to see me, and I don't have the vaguest idea what this is all about." He said, "Well, we have decided we have to tell you something because we don't want to shut down *The Maroon,* but we don't want you to publish anything further that could cause problems." He then pointed to *The Maroon* story about Arthur Compton. The story stated that Compton was working on breaking the atom.

Kimpton said, "The reason the military authorities are concerned is because there is a great project related to the war going on at the University involving the development of a weapon that will revolutionize warfare and Compton has been working on that." He told me this exactly. He said the Army people were worried that by disclosing this information about Compton, we would have divulged to the enemy a major secret about what is going on here at the University. He said "We are working here on a great new weapon." However, he didn't call it an atomic bomb.

Mr. Pierson: He may as well have said an atomic bomb.

Mr. Krash: But he didn't say that. He said they are working on a great new weapon that was revolutionary in nature. Actually, Kimpton was an executive on the Manhattan Project at Chicago, and I didn't know that either. He didn't tell me that either. All he said was that the intelligence people were concerned that enemy agents would be alerted to the fact that Compton was engaged in research relating to breaking the atom. The whole thing was ridiculous. In the first place, nearly every physicist in the world at that time was probably working on breaking the atom, whatever that means. Secondly, there was a big dining hall at the University, Mandel Hall. If anybody went there for breakfast or lunch, you would see Fermi, Leo Szilard, and some of the most famous physicists in the world having coffee or having lunch there. They weren't hiding out of sight. They were present there. You didn't know what they were doing but you would see some of the most famous physicists in the world having breakfast or lunch. Obviously, they were not at the University engaged in research about Shakespeare. In addition, there was a military guard marching in front of some University buildings. The notion that we could be

tipping off enemy agents was ludicrous. In any event, the intelligence guys were tremendously exercised about this. How they found out about the story in *The Maroon,* I never knew. Kimpton told me we should not publish anything further about Compton's activities. He told me not to discuss our conversation with anyone. But after I left his office, I did talk to the newspaper's business manager, my friend Alan Strauss, who was a major in chemistry.] asked him if he knew what Kimpton was talking about. Strauss said he didn't have the faintest idea what Kimpton was talking about. We didn't have any idea what Kimpton meant by a revolutionary weapon. It didn't sink in on us.

A week or two later, following this episode, Arthur Holly Compton was named the President of Washington University in St. Louis. That was a big story for *The Maroon.* He was the Chairman of our Physical Sciences Division. Obviously, that was a front page story for us. In the middle of the week, I received a call from the Major. He said, "We assume you are going to be writing a story about Compton becoming the President of Washington University. I said, "Of course, that's a big story for *The Maroon."* He said, "Well, we would like to come and review it." Here I am 18 years old, editor of the student paper, and I drew myself up and said, "Well, in that case, I would have to put a slug line on the story "Passed by military censor." The Major said, slowly but clearly, "I don't think that would be advisable." Suddenly, it dawned on me that I was in a position where my newspaper could be shut down. It took me 30 seconds to realize that. So, I said to him, "You can come and review the article." And he did. He came in an hour or so and read the proposed article. He didn't change a word in the story. We were very careful not to say anything about Compton's research relating to breaking the atom or

anything like that. The Major and I shook hands, and he left. I never saw or heard anything more from him, and we ran the story in the Friday edition of *The Maroon.*

Several years later, there was a series of articles in *The New Yorker* magazine, discussing breaches of security that occurred concerning the Manhattan Project. In the article, there was a paragraph that said the student editors of *The Maroon* at the University of Chicago, in a burst of schoolboy enthusiasm, had divulged information about Arthur Holly Compton and atomic research, which had created a great stir in the Chicago Office of Military Intelligence.

Mr. Pierson: So this was not just a small incident on the campus at the University of Chicago.

Mr. Krash: No, No. So here I was, in the spring of 1945, in possession of one of the greatest scoops of the 20th century, the development of the atomic bomb. I had it in my hand. Of course, I didn't know it, but I was on the edge of divulging it in this article. It was really, of course, not divulged. The spring term ended, and I went home in June. In July the bomb was dropped on Japan, on Hiroshima, for the first time. I then realized what Kimpton had told me.

Mr. Pierson: This is what, two-three months later?

Mr. Krash: We published the article in April 1945, so yes, two-three months later. But it was only in August 1945 that I realized what had gone on at the University of Chicago. Fermi and his colleagues had produced the first chain reaction in Chicago. A lot of the great, basic research on the atomic weapon was done at the University of Chicago. Fermi was a scientific genius and one of the great figures in physics in the 20th century, and one of the foremost figures in the

field of atomic energy. But it was only in August, after Hiroshima and after Nagasaki, that I realized and appreciated what Kimpton had said to me. I remember talking to Alan Strauss later, and neither one of us realized at first what it was all about. At any rate, I went home in June at the end of the school year, and I was called up for the draft. I was turned down. The war in Europe had ended. I had bad feet and weak eyes. The whole thing was changing. The war in Germany had ended several months earlier and the war in Japan ended a few weeks after I was called. So I went back to the University of Chicago in the fall of 1945. I remained the editor of *The Maroon* through the fall semester of 1945. One of my successors as editor was David Brody, who later became famous as a columnist for *The Washington Post* and other papers.

Mr. Pierson: Did you and Brody in later years become good friends?

Mr. Krash: Not close friends, but acquaintances. He died a year or two ago. He was a very fine person. He was exceptionally able.

Mr. Pierson: One of my favorites.

Mr. Krash: He was a terrific columnist and a first-rate guy. At any rate, I went back to the University of Chicago for my second year in September, 1945, and around December, I began to realize that I was pouring so much of my time into *The Maroon* that I wasn't doing what I had come to Chicago to do, which was to get the benefit of an education. *The Maroon* just took up enormous amounts of my time.

Mr. Pierson: Did you think of what you were going to do at this point when you left college.

Mr. Krash: Well, I was thinking I wanted to be a newspaper man and by this time

something else had happened. The University of Chicago had dropped out of the Big Ten. The University of Chicago was once a famous member of the Big Ten, with the celebrated Alonzo Stagg. But the University of Chicago refused to admit students who couldn't qualify as regular students. There were no athletic scholarships and no exceptions, no affirmative action for athletes, or anything like that. **In** other words, you couldn't get into the U of C because you were a good basketball player or a good football player. So Chicago couldn't recruit most athletes. They were just hopeless in competing against teams like the University of Michigan, for example. It was impossible for Chicago to compete against those guys. There is a famous story that the University of Chicago played football against Michigan in 1938 or 1939. I think the score was 72-0. The story goes that Hutchins came into the locker room after the game and said, "I will make sure this never happens again." He then convinced The Board of Trustees that the University of Chicago should withdraw from the Big Ten. A few years later The University of Chicago did play football and basketball games with teams of their equal. The U of C continued to play basketball against small colleges when I was a freshman and sophomore. I made arrangements with *The Chicago Tribune* to cover those games. The Chicago games only got an inch or so of the space compared with Northwestern or the University of Illinois basketball games, which got major coverage. *The Tribune* would send out a wire operator to sit next to me because they did want The University of Chicago games covered. That's the way they operated. I was able to go to college financed partly by a scholarship. Secondly, I waited on tables in the Burton Judson dining room, and I taught at a Sunday school at a nearby synagogue on Sunday mornings. I also made a little money that way. I made a little money by being a sports reporter,

covering games, which was very little because University of Chicago basketball was not a major subject of interest to *The Chicago Tribune* to say the least. But they wanted it covered. So I did so. I was thinking all the time, because of my experience in Cheyenne as a sports writer, and my experience as an editor of *The Maroon,* and my whole outlook or vision of myself, that I would become a newspaper person. That is what I was thinking I would do. Really, I wanted to become a political columnist, that is what I thought I would do when I got out of college.

Mr. Pierson: Were there any political columnists around at the time.

Mr. Krash: There was Walter Lippmann. But I knew very little about him. I would read some of the columnists in *The New York Times* and became familiar with them a little bit. In any event, I thought I wanted to be a political journalist after I left school. I had no idea of being a lawyer. I didn't have the foggiest idea about being a lawyer. There were no lawyers in my family. That wasn't in my realm of thinking. My thinking was to be a newspaper person.

The second year of college, like the first year, was intellectually very stimulating. It was eye-opening. That is when I had David Riesman and Elder Olson and Joseph Schwab as teachers, and it was really a great awakening for a person like me coming out of Cheyenne. It really transformed me. I made many good friends and met some exceptionally gifted people. Because I was the editor of *The Maroon,* I was known at the University, and I got to know a lot of people at the University. For example, I would go and meet with Hutchins, whom I count as one of the most remarkable people I have ever met. He was a brilliant, charismatic person. I would see him from time to time, and he was extremely cordial and nice to me. I got to know Kimpton, who was the

Dean of Students. Kimpton later became President of the University of Chicago. He succeeded Hutchins. I got to know a number of my fellow students in the residence halls; many of them were very gifted people.

At the end of the second year in the college, when I was graduating from the College, I had to decide what to do, and I was still thinking I wanted to have a newspaper career. Hutchins had been a professor at The Yale Law School and the Dean of The Yale Law School before he became President of the University of Chicago. In various talks, he said that a good place to get a liberal education was in law school. I was pondering whether to go into the Division of Humanities or the Division of Social Sciences and studying political science, or history, or, alternatively, going to law school. I was influenced by Hutchins saying that law school is a good place to get a liberal education. He stressed that point. However, I knew nothing whatever about The University of Chicago Law School or being a lawyer. In order to get into the University of Chicago Law School at that time, you would be admitted if you were a reasonably good student in the College, which I was, and if a couple of professors in the College gave you a letter saying they knew you and they thought you would do okay in law school. I remember on a cold winter day, running into Professor David Riesman in the Quadrangle. Riesman, unbeknown to me, had been the editor-in-chief of *The Harvard Law Review* and, subsequently, a law clerk to Justice Louis Brandeis. I didn't know that. I knew him as a professor of Social Science. He had not yet written his famous book, *The Lonely Crowd.* I asked Riesman to give me a reference letter to the Law School, and I remember standing there in the cold hearing him say, "Oh you don't want to go to law school." And I said, "Yes, but I do." And he said, "You should do something else." I said, "I do

want to go to law school." He reluctantly gave me a two-sentence reference letter. I don't know what he said. That was one of the two letters I had to get into law school. I don't remember who the other letter was from. I didn't have to take any kind of test to get into law school at that time. It was very different from the situation that now prevails.

Mr. Pierson: So now, you've got four years of high school and two years of college and you are going to the University of Chicago Law School.

Mr. Krash: It is now the spring of 1946. I graduated from the College with a Ph.B. degree. I was 19 years old. If you went to the University of Chicago Law School as a student coming out of the College at the U of C, as opposed to a graduate from a conventional four-year college, you were required to go to the Law School for four years. A graduate from The University of Michigan or Illinois, for example, was required to attend only three years of law school at Chicago. In other words, they tacked on another year of law school for U of C College graduates, where you took economics and other courses. So in the fall of 1946, when I was 19 years old, I entered the University of Chicago Law School. The Law School building was part of the Quadrangles. It was at the center of the campus. I knew nothing about being a lawyer or what a law school education was all about. I was totally ignorant.

Mr. Pierson: We have now been at this for an hour and a half.

Mr. Krash: What do you want to do? Do you want to stop?

Mr. Pierson: I think this is a good threshold because when we come back, I would like you to reflect on the same subjects we've covered as you cross the threshold of law school. What are you thinking?

Mr. Krash: I am now 19 years old and I have a degree from the college. But the truth is,

my education is very limited. Let's not kid anybody here. I am very immature. This is the fall of 1946, and the veterans who were in the war are now streaming back and entering the Law School. They are four or five years older than I am, and they have been to war. Many are married. They are really eager to get on with it, and they are far more mature and better educated than I am and, certainly, substantially more experienced. I was really wet behind the ears. There is no doubt that I did have the advantage of the very superior education at the University of Chicago College. That was the high point of my education. That is when I started to understand what being educated was like. They really exposed me to many great books and to ideas. They taught me how to think carefully.

Mr. Pierson: Analytical thinking.

Mr. Krash: Very much so. To think with precision and to read with care. And to be able to present an argument. It was really a superior education, no doubt about it. I would say in retrospect, however, to finish up here, that I feel, looking back at it, that there were some deficiencies in my college education. It did have some deficiencies. It was deficient in that I should have had much more math and science. One needs to know math because it is the language of science. My grandchildren learned calculus and beyond in high school. I didn't have enough science either. Also learning a foreign language is important. I just didn't really appreciate those deficiencies because my interest was in the humanities and social sciences. And I think I should have studied more history, which, up to then, I had gotten only from reading on my own in high school. My education was deficient in those respects. It wasn't the fault of the College. It was my fault, although I think they could have been more demanding. Nevertheless, it

as a rigorous liberal education. It was excellent.

Mr. Pierson: It seems to have served you well.

Mr. Krash: It did. I am greatly indebted to the College. The curriculum was excellent. The faculty was superb. We were not just sitting in big lecture halls. We had small classrooms with professors saying, "What do you think about this?" Asking other students, what do you think about Mr. Krash's answer and to have me respond. You were taught to speak and write with decision and care and to read with care. We read significant books. We didn't have a classical education in the English sense, with Greek and Latin, but we had a liberal education.

Mr. Pierson: And you talked about face to face encounters, analysis and decisions. You talked about reading and writing.

Mr. Krash: Fortunately I came to the College with a lot of writing experience. I was the editor of the high school newspaper and I wrote in the Cheyenne daily paper as a sports writer. I wrote six to ten articles each day for *The Eagle*. There were people there to point out things. By the time I was out of high school, I had written a lot, considerably more than the average high school student by virtue of this experience. But the college did not have us do enough writing.

Mr. Pierson: Did you do writing anywhere other than the comprehensive exam?

Mr. Krash: There were very few papers we had to do. That was a weakness of the College. However, that was later corrected in Law School by my working at *The Law Review*. I had an edge going in because of my prior writing experience in Cheyenne and as the editor of *The Maroon.* Being a sports writer is scarcely being Hemingway, but I became somewhat aware of what writing was all about

because of that experience. I learned much more when I was in law school. I give very high marks to the U of C College. It left me with a lifetime conviction that a liberal education is greatly to be desired. It is extremely valuable. It opened my eyes to ideas. It was the beginning of my education. Some of my fellow students did not like it because it was kind of impersonal. I loved it, however, and enjoyed it immensely.

Oral History of Abe Krash
Second Interview
August 13, 2013

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

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

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

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

Mr. Pierson: Was he a merchant?

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

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

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

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

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

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

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

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

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

Mr. Pierson: Was it here in DC?

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

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

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

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

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

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

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

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

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

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

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

Mr. Pierson An outsider.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. Pierson: What did it entail?

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

Mr. Pierson: So the professors lived there too?

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

Mr. Pierson: Sounds like mine.

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

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

Mr. Pierson: And vague.

Mr. Krash: What?

Mr. Pierson: And vague

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

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

Mr. Pierson: Were there any African American students?

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

Mr. Pierson: Ohhhhh

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

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

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

Mr. Pierson: Was there a process of interviewing?

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

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

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

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

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

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

Mr. Pierson: Was Berger practicing long?

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

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

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

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

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

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

Mr. Pierson: Closing up shop.

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

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

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

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

Mr. Pierson: Where were you living?

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. Pierson: Which test did you propose?

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

position with the firm. This would have been in the fall of 1953. I began as a temporary employee and remained with the firm for 65 years. Patricia Wald, later Judge Wald. She and I have remained friends for life. She has had a very distinguished career. I have great regard for her. Just last week, she was awarded the Medal of Freedom by President Obama. Her husband, Bob and I became friends as well; sadly, he died a couple of years ago. Pat Wald never came back to the firm after having her first child. She had a daughter, Sarah, and then she had other children later. Her son, Douglas Wald, is a partner in our firm. So here I am in 1953, the l2th lawyer at the firm. It is a small firm. I'm getting to get to know the various people better. First, let me speak of Judge Arnold; he grew up in Laramie, Wyoming. I grew up in Cheyenne. He was born a half a century before me. He was practicing law in the 1920s in Laramie and teaching at the University of Wyoming Law School. A friend of his heard there was a position as Dean open at the University of West Virginia Law School and urged him to take it. Arnold moved there as Dean. Charles Clark, who was then Dean of the Yale Law School, saw articles that Arnold was writing on procedure. Clark liked them and invited Arnold to come to Yale. This was around 1930-31. Arnold became a wonderful teacher at Yale. It was there that he wrote two books. One was *The Symbols of Capitalism* and the other was *The Folklore of Capitalism,* which was his most famous book and is still read today. He then came to Washington, DC to work in the New Deal. He was nominated to be head of the Antitrust Division around 1938, as I recall. The New Deal, which had been in favor of government regulation now shifted to being in favor of competition. Arnold was a hell-raiser. He sued everybody in sight. He

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

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

Oral History of Abe Krash
Third Interview
October 16, 2013

This interview is being conducted on behalf of the Oral History Project of the Historical Society of the District of Columbia Circuit. The interviewee is Abe Krash, Esquire, and the interviewer is Stuart Pierson, Esquire. The interview took place on October 16, 2013. This is the third interview.

Mr. Pierson: Today is October 16, 2013. We are here at the offices of Arnold & Porter. I am Stuart Pierson and Abe Krash is across the table from me. This is our third session of the interview and as usual Mr. Krash is ready and running to go. Abe it is all yours.

Mr. Krash: When we adjourned our last session in August, I was describing my coming to Arnold, Fortas & Porter in March 1953 as a temporary associate to take Patricia Wald's place while she was having a baby. At the end of the last session, I briefly spoke about Judge Arnold, with whom I worked a great deal after I came here. I thought I would also say a few words about Abe Fortas and Paul Porter, who were the senior partners at the time when I arrived. When I arrived at the firm, Abe Fortas was 42 years old. He was one of the three senior partners. By all measures, he was the dominant figure in the firm. He was a very complex and enigmatic person. I worked with Abe Fortas from the time I came in the summer of 1953 until he left the law firm to become an Associate Justice of the Supreme Court in the summer of 1965. Thus, I worked with him for about a decade. I have met and known many very able lawyers in my life time, but I count Fortas as the most able lawyer I have ever met. He was an exceptionally competent person. There is a biography about him by

Laura Kalman, which was written in the 1990s. I think it is quite good, though I don't think it really fully captures the way he was, and I disagree with some of her judgments about various things that happened during his life. However, it is a good biography about him. He was an extremely demanding task master. Anything he assigned to you, he insisted be comprehensively done and that you look at every nook and corner, and that it be written with care and precision. When I come into his office, he insisted that I have a pad with me. He would ask me something and he would say if you don't know, just tell me you don't know and that's OK. But don't guess. He wanted you to be certain of any answer you gave him. He was very impatient with work that he thought was shoddy or incomplete or didn't meet his exacting standards. He was a superb counselor and advisor to people in all kinds of legal matters. He functioned in many areas of the law. He was an excellent securities lawyer. He had been at the SEC. He was also active in the antitrust area. He advised people who had legislative problems; he would counsel people about international law problems. He was also an exceptionally good appellate advocate. Justice Douglas, who was on the Supreme Court for 34 years, said in his autobiography that Fortas's oral argument in the *Gideon* case was the best single argument during his time on the court. Douglas and Fortas were very good friends so you have to discount that a bit. Nevertheless, it is a high tribute. Fortas was not a trial lawyer. In the trial courts, he would argue motions, but he didn't try cases during the entire time I was at the firm. He was personally responsible for many of the firm's major clients. He was on the board of various organizations. His life was basically his work. He and his

wife did not have any children. He was very much devoted and dedicated to working for his law firm.

Mr. Pierson: Where had he been before he came to Arnold, Fortas and Porter?

Mr. Krash: He grew up and went to college in the Memphis area. I'm not sure, I think it was Southwestern College. He then went to the Yale Law School and graduated around 1932. He was the editor-in chief of the *Yale Law Journal*. Immediately after graduation, he was offered a position on the faculty, which is a very great tribute indeed. He taught briefly, and then he came to Washington. He worked at the SEC with William Douglas and at the Agriculture Adjustments Administration with Jerome Frank, who was later a judge on the Court of Appeals for the Second Circuit. Fortas was the Under Secretary of the Interior under Harold Ickes when he was 32 years old. There were a lot of very distinguished lawyers in the New Deal, to put it mildly, but Fortas was one of the stars. He left the government after the end of World War II. At that time he was the Under Secretary of Interior under Ickes, and he left to start the law firm with Judge Arnold, who had left his seat on the bench on the Court of Appeals. Arnold had been one of Fortas's teachers at Yale. The two of them started the law firm, and then they were joined a couple of years later by Paul Porter; they then became Arnold, Fortas & Porter. I will describe various cases and matters I worked on with Fortas. I had previously, in my last session, talked about my experience with him in the *Durham* case and perhaps I can say a little about the Gideon case a little later and some of the other cases I worked with him on. I learned a great deal from him. He was not a hale fellow well met. Sometimes when I travelled with him, as I did to various

cities where we had matters, he would speak quite openly about his background and events in his life, but generally speaking, he was very secretive about his life and experiences. As I said in our last interview, the first matter I worked with him on was this brief we wrote for the Court of Appeals in *Durham v. US*, where he was appointed by the Court of Appeals. After that I worked with him on many matters. I helped him write briefs, memoranda, draft speeches and so forth. The third senior partner when I arrived was Paul Porter. He was from Kentucky and he had varied experiences in the government. He had been an Ambassador to Greece. He was the head of the Office of Price Administration. He had been the Chairman of the Federal Communications Commission. I think he was the Chairman of the Democratic National Committee when Roosevelt ran in 1944. So we had very wide governmental experience and contacts. He was a superb raconteur. He would tell wonderfully funny and interesting tales. He complemented the two others, Arnold and Fortas, in an important way in that he had greater experience in the government than any of them. Arnold was head of the Antitrust Division and Fortas had been on various jobs, but Porter gave an added dimension to the two of them in terms of his wide-spread contacts with many people. He had basically a communications practice involving the problems of radio and television stations. He also did other things. He was a very good appellate advocate. I did not work nearly as much with him as I did with Judge Arnold and Fortas; I didn't do much communications work. I did a lot with both Arnold and Fortas, but much less with Porter. As I previously mentioned, I was hired to work on a major antitrust case which the firm had. We were

representing Lever Brothers. The Government of the United States had brought a suit against Procter & Gamble, Lever Brothers, Colgate, and the soap association, claiming that they were parties to a conspiracy to restrain and monopolize the soap and detergent trade in violation of the Sherman Act.

Mr. Pierson: So who were your clients?

Mr. Krash: Our client was Lever Brothers. The team consisted of Fortas who was in charge of all Lever Brothers' matters for the firm, and working under him in charge, running this case was Bill McGovern, who had been in the Antitrust Division and who was then a young partner in his late 30s. I was the third man on the team. My work was basically with McGovern.

Mr. Pierson: So a major antitrust case with two partners and one associate. Those were the good old days.

Mr. Krash: Those were the good old days. That was basically the team. Once in a while we would bring in some other associates when there was a big flurry of things. This case dragged on for many years in the United States District Court in Newark. Finally, the government dropped the case in the late 1950s because by that time the detergent industry had been transformed by the dominance of Procter & Gamble. What happened was that after World War II ended, Procter & Gamble introduced a synthetic detergent made from a petroleum derivative. It was called Tide and caught the two other principle competitors flat-footed. Within a decade, I would say certainly by the mid-50s, they were by far the dominant firm, with perhaps half the market. Lever Brothers, which was almost equal in market share with Procter & Gamble in the 1940s, fell far

behind. It became clear that it was senseless to pursue the case, and I think the government came to that realization and they dropped the case. In one matter, the case went to the Supreme Court, where there was a question about access to grand jury transcripts. Over the years, the various motions and conferences in the case were in Newark, and I was very much involved in this with Bill McGovern. As time went on Fortas faded out more or less. He always kept a hand in it and watched over it. But really it was McGovern and me who were the active lawyers in the case by and large. When there were important motions, Fortas would come to Newark and argue them. Another thing that was going on at the time I arrived at Arnold, Fortas & Porter in 1953 was that the firm had become involved in representing employees who were involved in the Government Loyalty and Security Program, which was started by President Truman, I believe, around 1948 or 1949. He issued an executive order requiring in substance that all government employees could be challenged on grounds of loyalty or security. It lead to administrative hearings. It was a very bizarre period in American history because what was going on was that government employees were being charged for being disloyal on the basis of associations they had back in college, or because of magazines they read in college, or groups they had joined years before. One feature of the program, which was very troublesome and problematic, was that these loyalty boards refused to allow the employee to confront witnesses against them. The Boards themselves frequently did not see the witnesses. They had FBI or other investigators talk to parties, and the Board relied on memoranda of these conversations. The employee didn't have a chance to confront his accusers. It

was a Star Chamber type of procedure. It was alien to the American tradition. Many of these government employees were people of modest means. The law firm, Arnold, Fortas & Porter, provided counsel in the late 1940s or 1950s to a number of employees. This had to be done *pro bono* because these were people without means. The three senior partners felt very keenly about this. They thought this was wrong, that it was a deprivation of freedom of speech and civil rights. Fortas was the driving force behind this, but he didn't appear publicly as much as did Arnold and Porter. Two of the cases in this area we handled went to the Supreme Court. One was *Bailey* v. *Richardson,* which is a case decided before I came to the office. It was decided by the D.C. Court of Appeals and then appealed to the Supreme Court. At the Supreme Court, it was 4 to 4. They didn't really deal with it. We were challenging basically the denial of the right of employees to confront adverse witnesses and the standards that were applied, which were so vague and subjective. Then, when I arrived there was a case in the firm involving Dr. Peters, a professor at the Yale Medical School, who was a consultant to a government agency. He had been charged with being disloyal. In any event, we drove that case to the Supreme Court. I helped write the briefs. I remember going to the oral argument. I sat at the counsel table. The members of the Court were arguing tremendously back and forth. Following the argument, the court asked for supplemental briefs dealing with a question that we had tried to finesse. We had in our briefs challenged the constitutionality of this program and in particular the procedures being followed by the loyalty boards which we said denied due process to the employees involved and were in violation of the First Amendment. We wanted

those questions decided. At the oral argument, the court became preoccupied with the procedures of the loyalty board. What happened in this case was that Peters had been cleared by the departmental loyalty board, and then an appellate loyalty review board reviewed the case and ruled against him. The Supreme Court asked for supplemental briefs on this issue of whether the Loyalty Review Board had jurisdiction to review a case which a Departmental Loyalty Board had decided favorably for the employee. We briefed the case, and the Supreme Court decided the case on the grounds that the Loyalty Review Board had no jurisdiction to hear a case involving a favorable decision to the employee by departmental loyalty board. We won the case on a procedural point, but we lost the case on what we really had fought the case to decide. We wanted a decision from the Supreme Court that this was an unconstitutional kind of procedure and program. As I said, I worked on the supplemental brief together with Judge Arnold.

Mr. Pierson: Was McCarthy acting in this case:

Mr. Krash: No, by 1953 or 1954 McCarthy had begun to lose altitude. There were Senate hearings relating to the Army. He had lost a great deal of altitude by the time of the Peters case. There was another major loyalty and security case which I worked on, which was called the *Fort Monmouth* cases. There were a number of employees at Fort Monmouth in New Jersey who were discharged as loyalty and security risks. We fought those cases, and we won all of those cases. The employees were all reinstated. This representation by the law firm of these government employees became widely known. It took a lot of guts to take on these loyalty and security cases because people would say you must be

sympathetic to communist if you are representing these kinds of people. Many lawyers were unwilling to take these cases because of apprehension that their clients would terminate their relationship. Arnold, Fortas & Porter stood their ground. They fought these cases, and the firm became famous as a place that would stand up for civil liberties. There were a lot of things written about the firm at that time. Fortas was very much a key influence in these cases. He believed passionately that this was wrong. The firm also represented a Owen Lattimore, who was a professor at Johns Hopkins and a specialist in Far East matters, who had been denounced as a Soviet agent of some sort. There were extensive congressional hearings in which Fortas represented Lattimore. The Justice Department then indicted Lattimore on grounds of perjury. The case was thrown out by Judge Luther Youngdahl. He was an exceptionally decent person. We successfully represented Owen Lattimore. The proceeding went on for a number of years. I was not personally involved in the Lattimore proceedings. Basically Judge Arnold, and before that, Fortas, and Bill Rogers, then an associate in the firm, who is now deceased, worked a lot with Arnold on the Owen Lattimore case. I personally was not involved. I was involved at a number of these loyalty security cases, particularly in the *Peters* case and the *Fort Monmouth* cases. I later read a book about the loyalty and security cases by John Lord O'Brien, a lawyer at Covington. He wrote a book about some of these things, that I reviewed. My review was published in *The Harvard Law Review*. In any event, I spent a lot of time in the earlier years I was in the firm working on various aspects of these cases.

The first case I worked with Fortas on was the *Durham* case, which was in the

summer of 1953. As I previously mentioned, the Court of Appeals in that case rejected the existing insanity rule in criminal cases and applied a new rule. Fortas asked me to draft a brief. He basically wrote it, but I wrote drafts of it, and he argued it. I subsequently became very much interested in the judicial administration of the insanity defense. There were many decisions by the Court of Appeals in the 1950s in the District of Columbia, mainly driven by the interest of Judge Bazelon, who was very much interested in psychiatry and the law. A number of people at that time had the idea that psychiatrists could be a very significant factor in the administration of criminal justice. I think people over estimated what psychiatrists knew and could do as well the resources that were available. In my opinion, the insanity issue is not a suitable vehicle for dealing with much of the administration of criminal justice. It relates to the most extreme kind of cases and not the typical cases. There is a lot of mental illness, God knows, among criminal defendants, but the insanity defense is not the way to deal with it. In the mid-950s I wrote an article describing the various decisions in this area by the Court of Appeals; there were many decisions involving pretrial standards, trial standards and post-trial standards. I wrote a lengthy article describing what was going on that was published in *The Yale Law Journal.* Sometime in the mid-50s Judge Bazelon called me and invited me to be his law clerk. But by that time, I was five or six years out of law school, and I just felt it was too late for me to do that. At any rate, I remained at the law firm. We were doing a lot of exciting and interesting things. I also just got married about that time or was about to get married. Around 1955, I met my wife, Joan. We got married in February of 1957. She grew up in the New

York City area and lived later briefly in the Colorado area, and she then came to Washington, DC. She was working for *The Journal of Commerce.* She was a reporter there. She attended George Washington University. She studied economics there, and I met her, and we were married in February of 1957. We subsequently had two daughters. We had my daughter, Jessica, who was born in 1959 and my daughter, Carla, who was born in 1961. Jessica became a professional musician. In our neighborhood there was a famous piano teacher at the time when Jessica was growing up. Her name was Ylda Novik. Her house was just two blocks away from us. We took Jessica to meet her, and she finally accepted Jessica as a student. To make a long story short, Jessica was greatly influenced by her and became a first class pianist. Later she went to Harvard, studied at MIT, at the Julliard School of music, and she got her Doctorate at Maryland and became a piano teacher and composer. She just had her second record out consisting of pieces she composed and played. She is a music professor at George Washington University. My other daughter, Carla, lives in Philadelphia. She was named after my high school principal, whose name was Karl Winchell and who greatly befriended me. Carla went to the Rhode Island School of Design in Providence. She is very artistic. She pursued a career to some extent in clothing design. She is not doing that any more. She lives in Philadelphia. Jessica is here in Washington.

I have been greatly enriched by my wife. I like to say that she has been a life force. She greatly encouraged me to do many things I might not otherwise have done. She was very supportive. We've been married for 56 years.

In the 1950s, I became heavily involved in the D.C. Bar Association. When I

was a young lawyer in the early 1950s, it was a segregated organization. Black lawyers were not admitted. A number of young lawyers in town who were members of the Bar Association observed this, and were very troubled by it; we felt it was unjust and immoral. So a group of young Turks in town got together and we presented motions to the Bar Association to abandon this segregation. We fought it. There was a great meeting of the Bar Association in 1956 or 1957 at the Mayflower Hotel to consider this issue. We rounded up a lot of the young men in town, and we won. We got the Bar Association to drop this rule and to admit black lawyers. There were many, many guys who joined together in that movement in town here. A whole group of us were just deeply offended by this, and we really fought it hard. I remember that some of the older members of the Bar Association urged the Association to continue to exclude. But the majority of the Bar Association voted to repeal the rule and so black lawyers were then admitted to the bar association.

Mr. Pierson: Was Jake Stein involved in that?

Mr. Krash: I can't recall whether Jake was involved. I wouldn't be surprised if he was. Bear in mind, this occurred about three or four years after the Supreme Court's decision in *Brown v. Board of Education.* Washington was still a very segregated community. For example black persons rode in the back of street cars; schools were segregated; many restaurants were segregated; theaters were segregated. There was a lot of segregation in Washington, which troubled many of us. But we fought this thing with the Bar Association, and we won.

There were almost no young black lawyers in the law firms. When I came to Arnold, Fortas and Porter, which was one of the principal law firms in town, there were no black lawyers. The law firms in town didn't hire them. They didn't give them a chance. During the 1950s our firm was among the first to hire women. There was an enormous amount of prejudice in the 1950s against black lawyers. They were shut out. There was also a great deal of prejudice against women. There were very few women at law firms that I can remember. We were very lucky to have Patricia Wald as an associate. Carol Agger, who was Abe Fortas's wife, came to our firm around 1960 when we acquired the Paul Weiss Office in Washington. She was a partner in that office. It was very rare in Washington at that time to have women as a partner. I remember going to the local District Court to argue a case before a woman judge. That was very rare too. There was just a great deal of prejudice and discrimination. With respect to Jewish lawyers, there was a lot of discrimination still against Jewish lawyers. In the late 1950s, it began to break down. I think several things happened to account for that. One was that many men who had been in the War together with Jewish fellows rose up and became partners in their law firms and it was not acceptable to them to exclude Jewish men from their ranks. They were friends. The second thing was that clients began to raise questions about this. The discrimination began to break down quite a bit in the late 1950s and early 1960s when you began to see change. But the prejudice and discrimination against black persons continued, and the prejudice against women continued long after that, I would say into the 1970s and 1980s. As a matter of fact, there are still some aspects of discrimination against women

lawyers. Today, I would say that there is relatively little discrimination with respect to the hiring of young black lawyers, but they still experience difficulty in rising up in the law firm. Very few rise up to the top ranks of the firms, although a few do. We hire many women at Arnold & Porter. I teach at Georgetown and half of the students in my class are women. Women now have much more opportunity. I would say that the playing field is still not even in some ways. For example, you see very few women occupying positions in the executive committees of law firms. However, more and more opportunities are opening up.

Going back to what's going on in my law firm in the 1950s, I was being given an opportunity because it was a very small firm. Arnold, Fortas & Porter had less than 15 lawyers in the 1950s. I was given an opportunity to go to court and argue motions and to take depositions. Sometime around 1956, we were retained to represent a company in an antitrust suit against the United Fruit Company involving the distribution of bananas. There was an antitrust suit in the District Court in New York. Judge Arnold was in charge of this, and he took me with him to New York. We tried this case in New York, and it was there really that I began to have a lot of opportunity to do trial work, particularly working closely with Judge Arnold and to learn the art of being a trial lawyer. That occurred sometime around 1957 and 1958. It was a terrific experience.

Mr. Pierson: When you were trying this case in New York, did you have an office in New York?

Mr. Krash: I don't think we did. The firm had an apartment in New York. We didn't have an office. I think we may have leased some offices or had some offices with co-counsel. Today, Arnold & Porter, LLP has an office in New York, a branch office with over a 100 lawyers but we didn't in 1953. There was co-counsel we had in New York and we worked there with them. This case went on for several months, and I had a chance to get a lot of experience as a trial lawyer.

Mr. Pierson: How did the case turn out?

Mr. Krash: The jury was hung. Finally it was settled as I recall. Another thing I did in the 1950s was I was invited to teach at the George Washington Law School. I taught a course in domestic relations to a big class there and that really grew out of some experience I had working with Fortas on a domestic relations case, which went to the Supreme Court, called the *Granville* case. Anyway, I did teach this course for one or two years at GW and that was the first time I had taught anything. As I have stated, during the period of the 1950s I was being given a lot of opportunity to do different things. One of the things that is very different now is that the practice today is very specialized. A client who has an environmental problem wants an environmental lawyer; if they have a securities problem they want a lawyer experienced in securities matters; if they have an antitrust problem, they want somebody who has worked in that area. But in the 1950s, we were generalists. We handled many different types of problems. There was not nearly the degree of specialization of the bar that is true today. So I got to work in a lot of different areas, and to do a lot of different things. The notion was we can learn anything if you give us a chance to do it. We were not nearly so compartmentalized or so specialized, as is true

today.

So here we are now in the late 1950s and the law firm is still a relatively small firm, with 15-16 lawyers, and I am working closely with Abe Fortas and with Judge Arnold. I'm learning a great deal from both of them. I became very close friends with Bill McGovern who was an excellent lawyer and a very fine person. I also became good friends with some of the other younger men in the firm, including a man by the name of Bud Vieth, who later became the Chairman of the firm. There was a partner by the name of Norman Diamond. We were very good friends, we would frequently have lunch together. Arnold, Fortas & Porter was characterized by great deal of camaraderie and collegiality, and there was a lot of affection and good will among the people at that time. My view is that much of that atmosphere was created by Judge Arnold, who was a person of great generosity of spirit, and who was regarded with great affection and respect by all the lawyers in the firm. He was just very good-willed. If you won a case, he was the first to cheer you. If you lost a case, he was the first to console you and encourage you. Abe Fortas was the manager and a key guy in terms of our practice. It was a small firm with a lot collegiality.

Mr. Pierson: Are you going to get to *Gideon* today?

Mr. Krash: Yes, I'll get to *Gideon*. That was in 1963. There are a couple of other things about the 1950s I should mention before I leave that decade. We were retained at one point, the firm was, to represent *Playboy m*agazine which was then just started and had been denied second class mailing privileges. That was

practically a death sentence for a magazine, if you didn't have second class mailing privileges. We succeeded in getting them mailing privileges. Their privileges were restored.

Mr. Pierson: This was in the 1950s?

Mr. Krash: Yes, This was in the 1950s. The Post Office gave the magazine the permit. If it hadn't been for that, *Playboy* probably would never have survived. In connection with that, there was a case in the Supreme Court, called the *Roth* case, which was the first obscenity case in the Supreme Court. We were retained by a publisher of a magazine called Greenleaf Publishing Company to write an *amicus* brief. You have to bear in mind that there had been no obscenity cases in the Supreme Court before that. This was the first case. This is in the mid-50s. We wrote this *amicus* brief. There was an associate in the firm at the time whose name was Charles Reich, who was a graduate of the Yale law school. He had clerked for Justice Black. I got to know him a little bit and to make a long story short, he came to our law firm as an associate in the mid-50s. He and I principally, together with Bill McGovern, wrote this *amicus* brief in the *Roth* case. No one had ever really thought much about obscenity and the First Amendment at this point. One of our principle points in the brief was that obscenity is a very subjective idea. In order to demonstrate that we inserted four pictures of scantily clad young ladies in this magazine, which we were representing as the *amicus*. The Post Office had objected to two of the pictures but not to the two others. It was impossible we thought rationally for anybody to say why two of the pictures were objectionable and two were not. We wanted to make the point to the court that obscenity is subjective and

arbitrary. Charles Reich had the idea that we should insert the four photographs into the brief and point out to the court how irrational all of this was. The magazine came out in kind of a news print, but when we got the pictures for insertion in the brief, that were done by a firm out of town, they were glossy, they would knock your eyes out. Well any way, we inserted them in this *amicus* brief. The brief was filed on Friday at the Supreme Court. I got a call at about 3:30 p.m. from Fortas's secretary saying that he wanted to see me right away. I went down to his office, his office was on the 2nd floor of our building. He had the brief on his desk. His name was at the top of the list of counsel. The brief was signed by Abe Fortas, Bill McGovern, me and Charles Reich. Fortas asked me who had authorized putting these pictures into this *amicus* brief? I replied that I thought you knew all about it. It was my impression that somebody had mentioned it to him. He said, I did not authorize it. He said very emphatically, "I want those damn pictures taken out of the brief." I told him the brief had been filed at the Supreme Court earlier in the day. Fortas said, I don't care. You get those pictures out of there. I remember the incident vividly. I raced out of our office; it was almost 4:00 p.m. and the Supreme Court clerk's office closed at 5:00 p.m. It was a Friday afternoon with a lot of traffic. I got a taxi and I raced up to the Supreme Court to the clerk's office. I got there about 4:30 p.m. and I asked the clerk of the Supreme Court if our brief had been distributed to the Justice. He said no they have not yet been circulated. I said, there has been an error in our briefs and I have to correct it. He said fine. He gave me the copies of the briefs. I sat there at a desk while the clerk looked at me in amazement as I took a pair of scissors and I cut out the four pictures

from each brief. One of the briefs was already gone. I understand it went to Justice Douglas's office. They were not all there. There were about 38. I went through every brief and with a pair of scissors and cut out these pictures. Bear in mind, this is a brief with respect to censorship. That's what we're talking about censorship. So, in a brief on censorship, I censored our brief by cutting out all of these pictures.

Needless to say, I could not address the fact that that brief referred to these pictures that were in there. But I did get the pictures out. I still have a copy of that brief with the original pictures. This is kind of a legendary incident at our law firm. People become convulsed with laughter over this. I will show them the brief and people laugh about it when I tell them what happened. Let me tell you, I didn't laugh about it at the time.

Mr. Pierson: I think they had not been served on the opposing parties.

Mr. Krash: No, they hadn't been served yet. Second thought, we probably did serve them the opposing party by mail. At that time you served by certified mail. But they hadn't been delivered to members of the court. The *Roth* case became famous as the point where the Supreme Court started to look at the obscenity issue. I became interested in that subject too. I subsequently wrote a review about the trial involving *Lady Chatterley's Lover*, the novel by D.H. Lawrence. There was a great controversy about the book in England. I wrote a review for *The Harvard Law Review* about the obscenity issue. It was based, in large part, on my experience in helping to write the *amicus* brief in the *Roth* case. This is the late 1950s now. I'm married and a young associate in Arnold. Fortas & Porter. In 1960, I was named a partner in the law firm, together with several

other men, including a man by the name of George Bunn who later left the firm and became Dean at the University of Wisconsin Law School. He and I were made partners. I'm a young, busy Washington lawyer. Sometime in the late 1950s, the Lever Brothers Company purchased from Monsanto Company the trade mark ALL. Monsanto is a chemical company, and they developed and manufactured the product, ALL, a synthetic detergent that was the first major detergent used in dish washing machines. What made ALL unique was that other detergent products had a lot of suds, whereas ALL did not, and you didn't want a lot of suds in your dish washer. The chemists at the Monsanto Chemical Company had crafted this product to work in dish washers; dishwashers were just becoming more wide-spread and popular at that time. This was a unique product. Monsanto was a chemical company, and it was not good at marketing the product, whereas that was Lever Brothers' forte. They were great marketers. So to make a long story short, Lever Brothers entered into an agreement with Monsanto Company whereby Monsanto transferred the trademark ALL to the Lever Brothers Company and Lever Brothers in turn agreed to buy from Monsanto the synthetic detergent, that is the ALL product itself. The government then pounced upon Lever and Monsanto under Section 7 of the Clayton Act, claiming that this was a transaction that would restrain competition. The suit was filed in the United States District Court in New York. Abe Fortas was the responsible partner for Lever work in our firm. Bill McGovern and I were assigned to represent Lever in this case. We were supervised by Fortas. This was a major case in our office. I went with McGovern to New York, and we tried the case before Judge Archie Dawson.

Early in the case, we made a decision to emphasize to the court the key role that Procter & Gamble played in the detergent industry and that Lever was a relatively minor player by this point and accordingly the transaction was pro-competitive. To prove our point, we had to go after Procter & Gamble's financials and other data. They fought us like a tiger.

Mr. Pierson: There wasn't enough evidence in public to disclose?

Mr. Krash: No, No, We wanted to show how profitable they were and that Lever was a relatively minor player struggling at this point. We wanted to show that Procter & Gamble was far more successful than Lever. There was no chance that competition would be adversely affected given their dominance. What we were trying to prove was that Lever didn't have the marketing muscle to restrain competition in the detergent industry. We went after Procter & Gamble and then after some really fierce engagements with them, we subpoenaed their data, and I went out and argued the motion in Cincinnati. The local judge rejected my arguments. I went back to Judge Archie Dawson and Dawson issued a trial subpoena, which he had the power to do under the antitrust laws; he could subpoena parties anywhere in the country. He ordered Procter to produce the documents showing their profits on detergents. They really resisted it, but we were able to show how enormously successful they were. Procter & Gamble was a highly competent organization and very successful, particularly in the detergent field at this point.

Mr. Pierson: Who represented Procter & Gamble?

Mr. Krash: As I remember the Dinsmore & Shol firm in Cincinnati represented them. Any way we tried the *ALL* case, and we won the case. Judge Dawson decided the case in our favor. The government then was going to appeal. Under the controlling statute, the government could appeal the district court's judgment directly to the Supreme Court. Fortas, McGovern and I met with the Solicitor General, Archibald Cox, and we urged him not to appeal, making much of the same arguments we made to Judge Dawson. He accepted our views, and the Government did not appeal the case. We won that case. The result of the case was that it saved Lever's position in the detergent business. Today, fifty years later, Lever is out of that business altogether. But for many years, ALL was its principal detergent product. That was a big case in our office, and once again I had an opportunity to appear in court, to examine witnesses to make arguments and so forth.

That brings us to 1962. At this point let me say I am a young partner now at Arnold & Porter and I am working closely with Fortas in a lot of matters. He represented Lever Brothers, Federated Department Stores, and other clients. I was one of the lawyers in the firm he asked to assist him in writing briefs, memos and things of that sort. Then, one June day in 1962, Fortas called me to his office, and he said I have been appointed by the Supreme Court to represent an indigent petitioner by the name of Clarence Earl Gideon. He said I want you to supervise the research and to help me write the brief on behalf of Gideon. I vividly remember the conversation a half a century later. Fortas said to me that he didn't know much about the case; he just had been appointed by the court. The case involved the right to counsel, he said. He

said to me, I want to know everything about the right to counsel since the invention of money. He meant it. There wasn't a day that passed that he didn't call me and say I want a memo on this point or that point relating to the right to counsel. We had the obligation as Gideon's counsel from day one to make every argument we could on his behalf that would be supported by the record. However, Fortas made clear to me at the first meeting that he wanted to get the Supreme Court to rule in this case that every indigent person in this country tried for a felony is entitled to the assistance of a lawyer. Two people were assigned to help me with the research and to write the brief. One was a fellow by the name of Ralph Temple, who was an associate at the firm. He later left the firm to become the Chairman of the American Civil Liberties Union office in Washington, DC. The other person assigned to me was a third-year law student at the Yale Law School, who came to our firm that summer as a summer law clerk. His name was John Hart Ely. I asked him if he would write a memorandum on some aspect of the case. I didn't know what a third-year law student would be able to do. He gave me the memo to me about a week later as I recall. I remember that as soon as I read it, I realized at once that Ely was an exceptionally gifted person of remarkable ability. I was right. He later became a professor at Yale, author of *Democracy and Distrust*, and at Harvard, Dean of the Stanford Law School, and the author of a book called which is a classic in constitutional law. He was one the leading legal scholars in the country during the last quarter of the twentieth century.. He was greatly respected and a highly regarded person. Sadly, he died about a decade ago. Any way, he was assigned to help me. We treated this matter in

the same way as if we had been retained by a major client for an important project. That is the way we approached any *pro bono* matter. It was given the same energy, commitment, and dedication. We worked the whole summer preparing and writing memos for Fortas discussing all kinds of issues that he was raising for us, and writing drafts of the briefs. There were two great problems we had to deal with, one relating to an issue of precedent and the other to a problem of federalism. As of 1962, there was a fundamental difference as a matter of constitutional law between the right to counsel in the federal courts and the right to counsel in the state courts. In the federal courts, the Supreme Court had decided in the mid-1930s in a case called *Johnson v. Zerbst,* that in every criminal prosecution, regardless of its nature, that if the defendant was indigent, the court had a duty to appoint a lawyer under the Sixth Amendment to assist him. If the court didn't do that, the judgment was void. In the state courts the rule was quite different. In a state court, the rule was that in a capital case, cases involving the death penalty, the court was required as a matter of constitutional law to appoint counsel for an indigent defendant. That doctrine was derived from the Scottsboro Brothers case, *Powell v. Alabama,* decided in 1933. But in all other felony cases, that is in all non-capital cases, there was no constitutional obligation on the part of the state courts to appoint counsel for an indigent individual. That principle was confirmed by the Supreme Court in 1952 in a case called *Betts v. Brady,* which was a Maryland prosecution for robbery. The defendant didn't have a lawyer, and the Supreme Court held that the state court was required to appoint counsel only if there were "special circumstances." "Special

circumstances" were such that in this particular case, the court could conclude that the failure of the defendant to have a lawyer denied him a fair trial. So it was that many defendants, as of the time the *Gideon* case was decided, were being prosecuted for felonies and convicted in the state courts, and sent to jail without a lawyer. There were no "special circumstances" in the *Gideon* case. Gideon's petition involved a plain vanilla case which raised precisely the issue as to whether or not in an ordinary felony case, in a state court, not involving the death penalty, if the accused was indigent, did the state have a duty to provide a lawyer for him. That was the issue.

As I said, we had two problems. The first was how do we deal with *Betts v. Brady*, because there were no special circumstances in Gideon's case. He was a 50-year-old man, he was not illiterate, he was mentally competent, he was not inexperienced in criminal cases. In order to win, we had to persuade the court to overrule the *Betts* decision. As of 1962, 45 states furnished a lawyer to indigent defendants in non-capital felony cases, but they didn't do so pursuant to the U.S. Constitution. They did so pursuant to state constitutions, state court decisions, and state court rules. There were five outlier states, of which Florida was one, which did not supply counsel to an indigent defendant in a non-capital case. So our first problem was how to deal with *Betts v. Brady*. We urged the court to reject *Betts v. Brady*, to overrule it. When the court granted *certiorari* in the *Gideon* case, it specifically asked counsel to brief whether *Betts v. Brady* should be reconsidered. That was a clear signal to us that the court was considering abandoning the *Betts v. Brady* rule. Problem number two that faced us, a central problem, was federalism,

because if the Supreme court were to decide, as we were urging, that the states had a duty to provide a lawyer for defendants in all felony cases, that would be an intrusion by the Supreme Court to the administration of justice by the states, requiring states to appropriate the money to pay for defense counsel. We had to address the federalism issue. It was very touchy. You have to remember a bit of constitutional history and bear in mind that as of this time, 1962, there was a tremendous argument going on within the Supreme Court as to whether the various procedural provisions of the Bill of Rights were applicable to the states. It was called the incorporation controversy. I need to take a little detour here. The Supreme Court had decided in the 1830s, in *Barron v. Baltimore*, that the Bill of Rights applied only to the national government, and did not limit the states. That was true as a general matter even as of 1962. It was still accepted doctrine that the Bill of Rights, as a general rule, applied only to the national government and not to the states. There had been a few exceptions as of the time we were briefing the *Gideon* case. The Supreme Court had decided that Freedom of Speech and Freedom of Religion, guaranteed by the First Amendment, are protected against state infringement by the due process clause of the Fourteenth Amendment. The Supreme Court also decided that if there was an unreasonable search and seizure in violation of the Fourth Amendment, that the due process clause of the Fourteenth Amendment made this right applicable in state courts. But all the other provisions of the Bill of Rights, all these procedural provisions, were then not deemed applicable to the states. Justice Black wrote a dissenting opinion in 1948 in *Adamson v. California,*

where he said the Fourteenth Amendment was designed to make all the Bill of Rights applicable to the states. But the majority of the court didn't agree with him. In any event, we had to decide how to deal with this federalism issue. In other words, the question was, is the right to counsel guaranteed by the Sixth Amendment, applicable to the national government in the federal courts, applicable under the due process clause of the Fourteenth Amendment to state courts. We had endless discussions in our office about how to deal with this issue. We knew that the Supreme Court was very deeply divided. At the end, Fortas's decision was to argue that Gideon had a right to the assistance of counsel pursuant to the due process clause of the Fourteenth Amendment, standing alone, on its own bottom so to speak, without reference to the Sixth Amendment. In other words, we finessed it. We did not argue that the Sixth Amendment is incorporated in the Due Process Clause of the Fourteenth Amendment, because we were afraid we would get caught up in a cross- fire between different justices on the Supreme Court. That's how we presented it. Fortas had a very brilliant insight on this federalism issue. In many cases tried in state courts where an indigent defendant didn't have a lawyer, after he was convicted, and his conviction was affirmed, a lawyer would file a petition on his behalf in a United States District Court for *habeas corpus* claiming that it was unconstitutional for his client to have been tried and convicted without the assistance of counsel. That meant that the federal district courts were reviewing state court convictions. Fortas said they're doing this *ad hoc*, that is a by case without any clear governing rule, and secondly they were doing so *ex post facto*, that is after the cases were tried. In

other words, he said that what was going on in the five states, where there was no counsel provided in ordinary felony cases, the federal courts were supervising the state courts by *habeas corpus*, which was a real intrusion into the states' rights. The rule that we were proposing which was that a lawyer should be appointed in every case would be much less intrusive. The state would be free to devise any method they wanted to provide counsel, but they would have to provide counsel. In any event, we wrote drafts of this brief. Fortas then took our drafts of this brief. I can tell you we just went through numerous revisions and changes. He was never satisfied. He took it himself, and he substantially revised and rewrote it. That was the brief we filed in the Supreme Court. It was an elegant brief. It was a superlative piece of work. We really poured a lot of effort into it. There is an interesting event which happened after we had written the brief. I was sitting in my office with the page proofs and going over them when Fortas came to my office. Our office was then in the red brick house on 19th Street. My office was on the 4th floor. He didn't come to my office very often. He said he would like to see the page of the brief where the signatures of counsel are; and I showed it to him. The brief showed Abe Fortas, Counsel Appointed by the Supreme Court. On the left hand side, it said "Of Counsel," and listed Abe Krash and Ralph Temple. Fortas looked at the brief and he said I notice that John Hart Ely's name is not mentioned. I replied that Ely is not a member of the bar, and you can't sign a Supreme Court brief as counsel if you're not a member of the bar. Fortas nodded his head and he said let me think about that for a moment. He then said, I have an idea. You see where it says "Of Counsel" on the left hand

side? He said, I want you to put an asterisk there, and we'll drop a footnote, and the footnote will state in substance that Counsel for the Petitioner wishes to acknowledge the excellent contribution to this brief by John Hart Ely, a third year student at the Yale Law School. That is how a third-year law student's name was inserted into this famous brief. Fortas wanted to give recognition to the excellent contributions made by John Hart Ely. He was a brilliant fellow, and he contributed significantly. At any rate, the *Gideon* case was orally argued when I was in New York trying the *ALL* case so I didn't get to go to the argument in the Supreme Court. This year, I've been invited to all kinds of events commemorating the fiftieth anniversary of the *Gideon* decision. The three other lawyers with whom I worked who are named in the brief, Fortas, Temple, and Ely, sadly are now dead. I am the only survivor, the last of the Mohicans so to speak. When folks throughout the country were having these commemorative events and looking for some speaker, I was called upon. I've gone to many places in the past year describing my experience in the *Gideon* case. I spoke at the Yale Law School, and in Reno, Nevada, where they have a college for judges. I was in Charlestown, SC recently speaking at a daylong conference on the right to counsel. Last week, I was in New York at a Bronx Public Defenders event. So I've made a lot of talks and written a lot regarding *Gideon* over the years. People frequently ask me at these meetings whether we appreciated at the time how significant or great the case was going to be. The answer is no, we did not. It was obviously important. The Supreme Court receives hundreds of petitions from prisoners, and they picked out Gideon's petition, so it was clearly important. It turned

out to be a very important case, not only in respect to the right of indigent defendants to counsel, but also this was the case that opened the floodgates for incorporating the rest of the Bill of Rights against infringement by the state. One of the things the Warren Court wanted to do was to improve the administration of criminal justice in the state courts with respect to poor people and African Americans. The technique the Court used was to invoke the provisions of the Bill of Rights against the states. That is, the right against self-incrimination, double jeopardy, cruel and unusual punishment, and so on were made applicable to the states. The *Gideon* case was a key step in that process because the court decided in that case that the right to the assistance of a lawyer protected against infringement by the national government pursuant to the Sixth Amendment, is also applicable to the states pursuant to the due process claim of the Fourteenth Amendment.

Mr. Pierson: So Justice Black took the step beyond the process.

Mr. Krash: He took the step that we didn't take. That's right.

Mr. Pierson: Was there ever a discussion as you were doing the brief of your memory of Crosskey as it pertains to the Fourteenth Amendment?

Mr. Krash: Yes. But you see, Justice Black had written this *Adamson* opinion in 1948. All through the years Justice Black had been fighting this incorporation argument. Justice Black never referred to Crosskey after his book came out in the early 1950s. The reason Crosskey was not cited, I believe, was because he was so controversial, and he probably didn't want to deal with that. If he were cited, other Justices others would invoke the critics who denounced Crosskey. We

knew when we were writing the *Gideon* brief that we had four Justices, that is Chief Justice Warren, Black, Douglas and Brennan, on our side. It was clear from cases decided in the two years before *Gideon* that these Justices were prepared to vote to overrule *Betts v. Brady.* But the opinion in *Gideon* was unanimous. Justice Harlan wrote a concurring opinion and Justice Clark and Justice Douglas did also. Another question people frequently ask me is whether any of us ever met Gideon. The answer is no. He was in state penitentiary in Florida. There is a long letter by Gideon to Fortas describing his life experience and background, which he sent to Fortas in the fall of 1962. Fortas had sent Gideon a letter asking him to describe his life. Gideon replied with this long letter, which is reproduced in its entirety in Anthony Lewis's book, *Gideon's Trumpet.* The letter is a dozen pages or more. Neither Fortas nor I ever met him. At any rate, the *Gideon* case was a memorable experience.

I have learned a lot at the conferences that I have attended about the right to counsel. Many of the participants were public defenders who are in the trenches and can tell me what is going on. I listened to people talk about current practices. The Gideon case was certainly among one of the highlights of my career, no doubt about that.

Mr. Pierson: Were there cases during the 50s and 60s where you look back and said, there is something that could have been better or we made a mistake here or there where lessons were to be learned.

Mr. Krash: That's a very good question. One of the things in looking back is that we were trailblazing in various cases. The *Durham* case was a trailblazing case. We

were trailblazing in the *Gideon* case, and in the *Roth* case and we were doing so in our antitrust work. We urging courts in antitrust cases to look at economics. Let me say that the notion that the courts in deciding an antitrust case, should consider what economists had to say was a novel idea. We probably could have done better. You must remember we were sort of fumbling our way through the dark. I'm sure we made mistakes.

Mr. Pierson: Something about the Supreme Court.

Mr. Krash: Yes, well you know, I was a young lawyer and certainly had enough questions at the time so I wouldn't go down the wrong alley and make mistakes. I was learning the ropes as it were.

Mr. Pierson: Did you try other cases besides the one in New York?

Mr. Krash: Oh yes, I was involved in the *Banana* case, I tried the *ALL* case. I was not lead counsel. I was still just a junior partner, but I was given a lot of responsibility and opportunity. The *ALL* case was a major antitrust case. I was given a lot of tasks which young lawyers today rarely get to do. Again, you have to keep in mind that we were a small firm, and we were getting these significant and exciting things to do. The volume of work was such that the older partners gave the young guys a chance to do these things. I was given a whole lot of opportunities to do these things which was really quite wonderful. The *Gideon* case was decided in March 1963. President Kennedy was assassinated in November, 1963, and that event had a profound impact on our law firm. Abe Fortas had been a trusted advisor to Senator and then Vice President Lyndon Johnson prior to President Kennedy's assassination. That relationship

developed in the late 1930s or 1940s. You must remember that Washington was then a small town. Fortas got to know President Johnson in Congress when he was working with the Department of Interior. How he got to know him, I don't know the story about that. But there is a famous story involving the race for the Senate seat in Texas of 1948. Lyndon Johnson was running for the Senate; his opponent in the Democratic primary was a man by the name of Coke Stevenson, who had been Governor of Texas and who was a very popular person. There were charges of fraud in the Democratic primary that Johnson won by a small number of votes. The District Court judge issued an injunction barring Johnson from appearing on the General Election ballot. Johnson was surrounded by a group of Texas lawyers who were advising him. They were very able people. The story is described by Robert Caro in his biography of Johnson. Johnson asked Fortas to come to Texas and meet with these Texas lawyers. The issue they were debating was how to proceed following this District Court's injunction, which if the Court of Appeals sustained would have kept Johnson off the ballot, and he would have never been elected as a senator. The Texas lawyers were urging that the preliminary injunction which barred Johnson from the ballot should be appealed to a Court of Appeals judge who they felt would be favorable to Johnson. They were arguing about who might be the most favorable judge for them in the Court of Appeals. Fortas, to their surprise, argued that they should go to the judge who would be the least favorable. In other words, he urged they should go to a judge who was likely to affirm the District Court's injunction. Fortas advised that they could then appeal that order to the Supreme Court, that is to the individual justice for this

Circuit, who happened to be Justice Hugo Black. After much debate, Fortas's advice was accepted. The appeal was taken from the District Court's order. The Court of Appeals judge to whom it was assigned promptly affirmed it. Fortas immediately filed an appeal from that order with the United States Supreme Court. The matter was brought before Justice Black on an emergency basis urging him to vacate the injunction. Fortas did so, knowing that Black was opposed to federal courts intervening in state elections. Fortas argued this matter in chambers before Justice Black and Black vacated the injunction. Johnson was elected to the Senate. I believe that event cemented the relationship between Fortas and Johnson, which is described magnificently in Robert Caro's *Biography of President Johnson.* I think it is in volume 2 of his biography of Johnson. There are four volumes as I recall, this is in volume 2. He tells of this incident and describes it very vividly. The point I'm trying to make is that I think from that day forward, Lyndon Johnson greatly valued Fortas's counsel and advice. During the Presidency of Kennedy, Fortas was not involved with the Kennedy Administration. As I recall, his name is not even in the index to Arthur Schlesinger's lengthy biography of Kennedy.

I was having lunch on November 23, 1963 at a restaurant on Connecticut Avenue when a bulletin was broadcast on the radio saying President Kennedy has been shot. I immediately left the lunch I was having with colleagues. I rushed back to the office because I knew that Fortas and I were scheduled to meet that afternoon with Bobby Baker, who was Johnson's right hand man and who had been involved in some matters alleged to be illegal. I was the one who told Fortas that Kennedy had been shot. By night fall, I believe, Johnson was in

touch with Fortas, and Fortas was at the White House the next day. A day or so later, Johnson was working on the speech that he gave the following week before the Congress. Fortas worked on that speech. From November 23, Fortas's life was also changed, and our law firm was changed. You have to appreciate the fact that Fortas was the principal partner at Arnold, Fortas & Porter. He was responsible for many of our major clients and for generating a good deal of the firm's practice. He was the firm manager. He was then being called upon by President Johnson for all kinds of matters. I would be in Fortas's office, for example, and his secretary would say to him that there is a call from the White House. Fortas became deeply engaged in advising the President in all kinds of matters.

The result of all this was because of his many time-consuming commitments and involvement with the President, Fortas pulled back from practice. The work had to be delegated to other lawyers. I was thrust more and more into roles that became my primary responsibility. In the spring of 1965, Fortas called me to his office and said that I need to make some recommendations to the President about a successor to Justice Arthur Goldberg who was leaving the Supreme Court for the UN. I remember suggesting many people to him. I think one of the people that I suggested was Ed Levi, President of the University of Chicago. Anyway, at the conclusion of the discussion in his office, I said to him, well Abe, what about you? He said I can have the appointment if I want it, but I don't want it. He mentioned various commitments he had in the law firm. We left it at that. This would have been around May of 1965. I thereafter went off on a vacation. I was in Holland in July and I picked up a copy of the

International Herald Tribune and there was a big story about the appointment of Fortas to the Supreme Court. President Johnson had summoned Fortas to his office and told him I'm going to make an announcement, I'm sending the troops to Viet Nam and you're going to be my nominee to the Supreme Court to replace Arthur Goldberg. I knew from our conversation that Fortas did not want to go to the Supreme Court at that point. I remember vividly that conversation. I knew Fortas greatly enjoyed the role of advising the President, and he wanted to continue to do so. I came back from my vacation and had to go to San Francisco to try a case. I was therefore, not around during his confirmation proceedings. He was confirmed in the Senate by a substantial majority. In the fall of 1965, Fortas left our firm to become an Associate Justice on the Supreme Court. The firm name, of course, was immediately changed to Arnold & Porter. That event also profoundly affected my life because now the major figure of the firm was gone. I was given the responsibility for some of our major clients. I also became deeply involved in the management of the firm, which really had been pretty much handled by Fortas. We set up a Policy Committee, and some of the younger attorneys took over the management, such as Bud Vieth, who became a major figure. I was immediately elected to the Policy Committee, and at this point I was also made a full partner. I am now in a situation where my responsibilities and role are greatly expanded. As I said, Fortas was very busy working with President Johnson and so I was placed in a role of being the principal contact day by day with Philip Morris who retained Fortas late in 1963. At that time there were six cigarette companies, R.J. Reynolds, American Tobacco, Brown & Williamson, Liggett & Myers,

Lorillard and Philip Morris, which was the sixth ranking and a relatively small company. The lawyers for the different companies were engaged in almost continuous meetings here in Washington because of significant problems that this industry had in Washington, particularly with the Surgeon General and with the FTC. Since Fortas was no longer available, I became the lawyer responsible for much of the Philip Morris matters. I sat in on the meetings with the various company lawyers and other counsel as the lawyer for Philip Morris. Within that group of lawyers, I became more and more involved. Philip Morris had a cigarette called Marlboro, which was originally marketed to women. Some persons at Philip Morris had the idea of putting a cowboy in Marlboro advertisements and history was made. Marlboro became the most successful cigarette brand in the world. Philip Morris rapidly ascended to become the leading firm in the cigarette industry. I became deeply involved in counseling Philip Morris. In the late 1960s, they acquired Miller Beer, and I became the lawyer in our office in charge of Miller Beer matters. In those days, they were major clients in our firm. Philip Morris remains so to this day, it is now called Altria. I haven't worked on their matters for many years. The point I'm trying to make is that Fortas departure affected the internal structure and operations of the law firm. Fortas had a very large practice and his clients were largely shifted to younger attorneys. Two of major clients were Lever Brothers and Federated Department Stores. Bud Vieth became the responsible partner for those clients, but I was deeply involved in various matters for those two clients. In addition, my role was really greatly expanded with respect to the internal administration of the firm.

One day in the early 1960s, the McKesson and Robbins Company, a drug wholesaler, came to our firm and said that they had been cut off by American Cyanamid and by Pfizer, another drug manufacturer, who refused to supply their drug products to McKesson any further because McKesson was coming out with an antibiotic drug product under its own label. McKesson was a wholesale drug company which distributed its drugs to retailers; it got the drugs it distributed from drug manufacturers, like Pfizer and American Cyanamid, but these companies cut off McKesson. We advised McKesson to file an antitrust suit in Philadelphia against American Cyanamid and Pfizer. I was the lawyer in charge of that case. We were seeking a mandatory injunction requiring them to sell to us which was hard to get. We tried the case in Philadelphia on a motion for preliminary injunction. I was the guy in charge. Bill McGovern played a role, but I was essentially responsible for the team of lawyers at our firm. The District Court judge granted the injunction.

Mr. Pierson: What was the judge's name?

Mr. Krash: Davis, I believe. I also learned something about practicing law as an out of town lawyer. We were in Philadelphia, and we hired as local counsel a lawyer by the name of Winnett who was a partner in a Philadelphia firm and who also had been a state court judge. The first day I was standing up making the arguments before the District Court Judge. He looked at me and he said, where is Judge Winnett? Why isn't he here? I had told Judge Winnett he would just be sitting in court with nothing to do, so he need not come. At lunch time, I ran out of the court room, and I called him up and I said, I would appreciate it if you would come down and sit with us as counsel. I gave up my seat as a lead

counsel and put Judge Winnett in that seat. From that time on, the District Court judge beamed down at me and smiled at me. I learned that if you're an outside lawyer, from Washington, going into a court in another city, and you retain a local counsel, make sure that that local counsel has a prominent position. I had to learn the hard way, but I learned it, believe me, sitting there that day, by bringing in the local lawyer; who was a very nice fellow, but who knew nothing about our case I just asked him to say a few words and he did. The District Court judge could not have been nicer to me thereafter. The judge ultimately ruled in our favor. That was a learning experience for me. This case became a celebrated event at the firm because it was an unusual result and McKesson then became a client of ours. Another case in which I was involved that became well known in our firm was representing the Superior Oil Company, an oil company located in Texas. They had bid for leases on off-shore oil properties. They lost the bid to another company, but the company which won the bid failed to sign its bid. The government, nevertheless, awarded the lease to the company whose bid not signed. They were the highest bidder, but they didn't sign it. I looked at it and I said wait a minute. How can they accept a bid that isn't signed? There is something wrong here. I advised Superior to bring a suit in the District Court for a restraining order and TRO and a preliminary injunction. I urged that the government can't accept an unsigned bid. To make a long story short, we won a TRO, and then a preliminary injunction, and then we won a permanent injunction. I argued it three times. We were talking about very valuable properties during this time.

Mr. Pierson: Was the case in Texas?

Mr. Krash: The case was here in the United States District Court. In any event, we then met

with the Solicitor General. The question was whether he would appeal the case to the Supreme Court. I talked to lawyer in his office and I said this is an unsigned bid, and it should not have been awarded. You've got a losing point here, and we are right about this. They reviewed it, and the case was settled. They agreed to give the lease to Superior, if we would agree to vacate the ruling. We won the case for Superior, and for many years afterwards we were their counsel. They greatly appreciated that we succeeded in doing that and as I say, it was a case which created a lot of amusement and discussion within the firm, because it was kind of a far out case but when we won and came back each time from going to court and said we won that, people didn't quite believe it.

Mr. Pierson: Who was the judge here?

Mr. Krash: Judge John J. Sirica, I think (The same as the Watergate case). In thinking back what my professional life was like in the late 1960's, I was a young lawyer with lots of opportunities and responsibilities. We had acquired the Washington Office of the Paul, Weiss firm around 1960. The office consisted of tax lawyers. That's when Carol Agger and several other tax lawyers came to our firm. Over the years, we also kept recruiting young lawyers. At the time when Abe Fortas left the firm in 1965 to become an Associate Justice, Arnold, Fortas & Porter was a firm of about 35 lawyers. In the next five years, we doubled our size. We developed a very diverse and interesting practice. I rarely saw Fortas when he was on the Supreme Court. In the spring of 1968, President

Johnson nominated Fortas to succeed Earl Warren who was retiring as Chief Justice. Johnson did two things. He called his friend, Senator Dirksen, a Republican and Minority Leader in the Senate, and he asked him to support Fortas, which Dirksen agreed to do. President Johnson also met with Senator Russell of Georgia, who was an enormously influential senator. He was a very able person, and he was the leader of the Southern Democrats in the Senate. At the nod of his head, he could command the votes of 13 to 14 Southern senators. Senator Russell was a very good friend and ally in many ways of Johnson for a long time, and he agreed at first to support Fortas. Without going into all the details, what happened was that a group of Republicans led by a senator from Michigan decided to oppose the Fortas nomination on the grounds that Johnson had previously announced that he was not going to run again for President. They took the position that the nomination of Chief Justice should be made by the man who was elected President in November 1968. As I recall 18 of 19 Republican senators signed a petition to that effect. Then I think, unbeknown to either President Johnson or Fortas, Senator Russell told the leader of the Republican group that he would join with them and oppose the nomination. Why Senator Russell changed his mind still remains somewhat of a mystery. I believe that what happened was that a person Russell wished to have appointed as a District Court Judge in Georgia was not being pushed forward by the Justice Department, and Senator Russell came to think they were holding that nomination up in effect as a hostage to get him to support Fortas. He was offended by that. Also, I think it is probable that a number of the southern senators who were opposed to the Warren Court because of its decisions in

racial matters, came to Senator Russell and urged him to oppose Fortas, who was closely identified with the Warren court. At any rate, once you had a coalition of the 18 or 19 Republicans and 13 southern Democrats, who Senator Russell commanded, there was a sufficient number to filibuster the nomination and to defeat it. During the summer, while the nomination was pending, there was a newspaper story that Fortas had received $15,000 fee to teach a class at American University, and that this money was raised from Fortas's former clients. This story injured Fortas's prospects of confirmation. However, in my view, the nomination was dead for political reasons within a week or two after it arrived at the Senate because of the coalition between the senate Republicans and the Southern Democrats led by Senator Russell. At any rate, there was a heated debate in the senate about the nomination over the summer and the fall. It became clear that there would not be sufficient votes to confirm. In September, Fortas asked President Johnson to withdraw the nomination. He remained on the court as an Associate Justice. Chief Justice Warren continued in his position until his retirement. I had nothing to do with the confirmation battle. I was never consulted about it.

I should mention a couple of other things that occurred in my life during the 1960's to make the story complete. In 1966, President Johnson established the District of Columbia Crime Commission to investigate the problem of crime in the District. I was appointed to this Commission. There were nine of us on the Commission. To the best of my knowledge, my appointment came about because a couple of my friends in the Department of Justice who had a role in advising who should be picked as members of the Commission, put my name

forward. The Commission had a number of meetings and hearings. One of the key staff persons was a fellow by the name of Howard Willens, who later became a very good friend of mine. Patricia Wald was also a key staff member. In any event the Crime Commissioner issued an elaborate study of the crime issues in the District of Columbia. We made all kinds of recommendations for trying to improve the police force, community relations, and the administration of criminal justice. Regrettably nothing much resulted from this excellent study. I spent a couple of years going to meetings and writing memos and participating in this. I learned a lot, and it was an interesting and significant experience. At this stage in my life, I was busy representing Philip Morris, Miller Beer and other clients in all kinds of matters. I did work for Federated Department Stores. I was counsel for Unilever, which had been one of Fortas's clients. Another matter I became involved in related to the Bendix company. Bendix was a major manufacturer of automobile parts. They acquired FRAM, a company that made and sold automotive filters. The Federal Trade Commission challenged the acquisition as a violation of Section 7 of the Clayton Act. The FTC said it would lead to a diminution of competition in the making and sale of automobile filters. We tried this case before an administrative law judge. That case was tried here in Washington over a period of many weeks. The judge ruled in our favor. Then the commission reviewed the case and reversed the judge's decision; it held the acquisition illegal. The theory of the Commission was that in lieu of making this acquisition of FRAM, a leader in the auto filter business, Bendix should have entered the filter industry by acquiring and expanding a small filter company; that is, it

should have made a "toehold" acquisition. No one had ever advanced that theory when we tried the matter. This was something that the Commission sprung on us when they decided the case. We appealed the Commission's ruling to the Court of Appeals for the Sixth Circuit. I felt the Commission's action was wacky. This case was being decided against us on the basis of a theory we never had a chance to refute, or rebut or to present evidence about, and this made no sense at all. In short, I said this was procedurally unfair. I argued this before the Court of Appeals in Cincinnati and the Court of Appeals agreed with me on this point and unanimously reversed the Commission's decision.

Mr. Pierson: Do you remember who the panel was?

Mr. Krash: I don't. I can find out. They did not decide the case on antitrust grounds, but rather there was a violation of the administrative procedure act, and that as a matter of fairness, Bendix should have been apprised of this particular theory. Bendix succeeded in acquiring FRAM. Bendix became a client and we represented it in various matters. Then they were taken over by another firm about a decade later. I was privileged in having a number of exceptionally capable young lawyers working with me on the *Bendix* case. One of the principal ones was Daniel Rezneck. He came to our firm at the time of the *McKesson* case, and he worked together with me for about 25 years. He closely collaborated with me on many matters. He is an extremely able lawyer, and I greatly valued his assistance. There were other younger lawyers who were assigned to me because I was in charge of a lot of matters, and I couldn't possibly do these things alone. I needed people to assist me so many of the

young lawyers worked with me. The firm remained a very collegial place. We did not have any people who became super partners. We were equal regardless of how much business we generated for the firm. We were able to attract to the firm very good young persons who were eager to come to work for us.

In the spring of 1969, Abe Fortas resigned his seat on the Supreme Court. *Life* magazine became aware of the fact that Fortas had made an arrangement beginning in 1965 with a man by the name of Louis Wolfson, who owned the Transit Company here. Fortas became a member of the Board of Directors of a public interest foundation established by Wolfson. He entered into an arrangement whereby he would be paid $25,000 annually. *Life* magazine published this story. Wolfson had become entangled with SEC in various matters. The question *Life* raised was what is a justice doing being involved with a guy like Wolfson. In May of 1969, Fortas resigned from the Court. No one to this day know why he resigned. In any event, there were discussions among the partners about his coming back to the firm. Laura Kalman describes these discussions in her biography of Fortas. The end result was that he didn't come back. He joined a Chicago law firm, and he had an office in Georgetown. Fortas died in 1982 as a result of a ruptured aorta. I rarely saw him from the time he left the Supreme Court until he died. The rejection of his nomination to be Chief Justice and his subsequent resignation were severe blows to those of us in our firm. I regard Fortas as a tragic figure. Various people disagree with me about his characterization. The feel he brought about his own down fall. He was perhaps not tragic in the sense that the Greeks would define tragedy, that is to say a man of noble birth who experiences a great misfortune as a result of a

defect of character. He was tragic, I believe, in the sense that he was a person of enormous ability who never fulfilled the expectations people held of him, or fully realized his great gifts. He was an exceptionally able person. He was one of the most able persons I have ever met. His rejection as Chief Justice and his resignation were traumatic events. Fortas was a very sensitive man, and I'm sure that those things caused him a great deal of anguish. I should point out that it has never been shown that Fortas acted illegally or that he violated then existing ethical standards. Carol Agger, his wife, remained with the firm as a significant partner in charge of our tax practice. As I previously mentioned, Fortas died in 1982, and she died about a decade or so later, in the 1990s. What we have been talking about today is my experience at Arnold & Porter from 1953 to around 1970. I had great opportunities. The firm was and is a very exciting place to be. I was a lucky fellow to have had a chance to work with two extraordinary figures, Abe Fortas and Judge Arnold. I learned a great deal from each of them and from other partners. I enjoyed the friendship of younger lawyers at the firm. I was supported by a cast of exceptionally talented younger lawyers whom the firm was able to attract, and they gave me tremendous, important assistance. It was an exciting and interesting period in my life.

Oral History of Abe Krash
Fourth Interview
November 7, 2013

This interview is being conducted on behalf of the Oral History Project of the Historical Society of the District of Columbia Circuit. The interviewee is Abe Krash, Esquire, and the interviewer is Stuart Pierson, Esquire. The interview took place on November 7, 2013. This is the fourth interview.

Mr. Pierson: Today is November 7, 2013, Abe Krash and I (Stuart Pierson) are here at the offices of Arnold & Porter. This is the fourth session in our interview. When we last stopped, we designated this interview to begin with Abe Krash's life in the 1970s.

Mr. Krash**:** Yes, We stopped near the end of the 1960s, and I thought if we could talk about things in the 1970s, possibly into the 1980s and then perhaps we'll have one final concluding session, which should be a short session.

There was one significant matter that occurred at the end of the 1960s that I neglected to talk about last time which I felt I should discuss and that was my involvement in a Court of Appeals decision with respect to the Federal Communications Commission involving the fairness doctrine. What happened briefly is this. A man by the name of Banzhaf filed a complaint with the Federal Communications Commission with respect to cigarette advertising; it was being carried by licensees, that is TV and radio stations. The FCC had a doctrine called the fairness doctrine which had been formulated in 1949; in substance it provided that if licensee presented one side of a controversial issue, it was obliged to present the other side. That doctrine had never been applied to advertising. In response to this petition by

Mr. Banzhaf, the FCC issued an order which in substance required all licensees, that is all television stations and all radio stations who carried cigarette commercials, to devote a significant amount of time to the position that cigarette smoking is hazardous to one's health, that is to the other side. The cigarette companies and the networks challenged the validity of this rule. Under the appropriate statutory procedure, that appeal had to be lodged with the Court of Appeals for the District of Columbia Circuit. My law firm was retained to represent the cigarette manufacturers. There were separate counsel representing the various networks. The contentions we made were as follows. First of all, this was the first occasion where the fairness doctrine had been applied to advertising. It previously had been applied to political messages, and we said that the FCC neither had the authority nor was there a precedent for applying the fairness doctrine to the advertising of a product. Our second point was based on the Cigarette Labeling Act, which Congress had passed shortly before this proceeding; It provided in substance that the cigarette companies had to place a warning label on each cigarette package, but it also provided that there should be no other regulation with respect to advertising. We argued that this FCC's order violated that provision of the Act of Congress with respect to advertising. Finally we complained about the procedure. There had never been a hearing or notice from the FCC about this rule. The FCC just issued this order in response Mr. Banzhaf's petition.

Mr. Pierson: Who was the Chair of the FCC? Was it Minow?

Mr. Krash**:** No, Minow left long before. At any rate, I argued this orally before the Court of Appeals. I presented the position of the cigarette manufacturers and other

counsel representing the networks presented their argument also. This was a very unusual type of order by the FCC. The Court of Appeals ruled against us; it sustained the power of the FCC. The FCC had conceded that it could not abolish cigarette advertising on radio and television. They could not do that, consistent with their statutory authority. Also, they had admitted that they could not require warning notices in broadcast cigarette advertisements. The Court of Appeals said the FCC rule here was not a regulation of advertising within the meaning of the Federal Cigarette Labeling Act, and it sustained the FCC's power to do this. This decision led to a series of events. The cigarette manufacturers decided several years later to withdraw all cigarette advertising from broadcasting. That is on both television and on radio. That was an extremely dramatic action by them. The problem in a nutshell was that no one manufacturer wanted to do that unilaterally. If it was to be done, it would have to be done by the entire industry. But if there was to be an agreement to do that, that would raise serious questions under the antitrust laws because there would be an argument that this was a conspiracy, in effect, to boycott the broadcast licensees with respect to advertising. A party who did that would be very vulnerable to an antitrust attack. We had to shape this in the way of a Noerr-Pennington doctrine, which was the idea we were petitioning in effect the legislative branch to do this, and we persuaded the Justice Department to acquiesce in this. So this very significant action involving hundreds of millions of dollars of advertising stopped on television and radio.

Mr. Pierson: Can you explain to the people who are going to read this what the Noerr-Pennington doctrine is and explain how it works?

Mr. Krash: The Noerr-Pennington doctrine is a doctrine that joints efforts to solicit legislative or administrative agency action restricting competition is immune under the antitrust- law.

As I said this cessation of advertising occurred in the early 1970s. Let me then just go back a minute and describe what the situation was here at the law firm at the beginning of the 1970s and what my role was in the law firm. As of 1970, Arnold & Porter was a firm consisting of about 70 lawyers. We had grown substantially during the 1960s. Judge Arnold died in the fall of 1969. Beginning in the decade, meaning the 1970s, the only one of the three founding partners who was still here was Paul Porter. He died in 1977; he was eating dinner at the Palm Restaurant, and he choked on a piece of food and died shortly afterwards. Abe Fortas who had left to take a seat on the Supreme Court in 1965 did not return to the firm after he resigned from the Court in 1969. What then happened essentially then was that, given the death of Judge Arnold and the departure of Abe Fortas, some of the younger lawyers obviously were moving up in terms of position in the firm. At this point, beginning around 1970, I was the lawyer in the firm in charge of several of the firm's most significant clients. This role was called the responsible partner. Needless to say, I didn't do all the work for each of these clients. I had many people working with me, but I was the responsible partner for the firm's representation of Philip Morris. We were the Washington counsel for Philip Morris, and also I was the responsible counsel for Miller Beer that they had acquired. I was the counsel in charge of the work of the firm for Unilever. I was very deeply involved in the firm's representation of

Federated Department Stores, which had been a long-standing client with the firm. They had a number of antitrust problems, which I was responsible for handling; Bud Vieth was the responsible partner for Federated. In addition, I had other clients that I was responsible for at this point. In addition, to that, I was deeply involved in the management of the firm. The firm was managed by what is called the Policy Committee which is an elected committee, and beginning in the early 1970s a new generation began to assume the management responsibilities of the firm. I was elected a member of the Policy Committee. I remained a member of the Policy Committee until I retired in the 1990s. I was also a member of the Compensation Committee which annually determined the compensation of partners. In addition, I was the partner in charge of the firm's antitrust practice group. I was very deeply involved with both the practice and management of the firm which was expanding and growing at this particular point.

Early in the 1970s, the law firm of White & Case became involved in a proceeding with the Securities and Exchange Commission. What happened was that the SEC had decided to challenge actions by lawyers and accountants as well as companies. This was the first case in which that happened, I believe. In any event, suit was brought by the SEC against White & Case and other law transaction closing, there should have been disclosures made concerning the financial conditions of various parties. This was called the National Student Marketing case. The White & Case firm, a very prominent law firm in New York, retained us to represent them in this proceeding.

Mr. Pierson: Do they have a Washington Office?

Mr. Krash: They did not at that time. The responsible partner in our firm in charge of this matter at the time was Milton Freeman, who had been a partner with the firm going back to the 1940s, shortly after the firm was founded. He was an SEC specialist, and he asked me to assume responsibility for the litigation, so I was the litigating partner. We ended up with a large staff of lawyers working with me. This was a very significant matter for the bar and the SEC, and needless to say, for White & Case. We had many, many meetings with the partners at White & Case discussing how to conduct this litigation.

Mr. Pierson: Was there a driving force within the SEC?

Mr. Krash: Yes, Stanley Sporkin was in charge of enforcement, and the SEC was determined to now challenge lawyers. This litigation was before Judge Barrington Parker and it went on for four or five years. I was very deeply involved in it together with a team of lawyers at our firm. I was assisted by Daniel Rezneck and Robert Winter among others. To make a long story short, the case ultimately settled; we negotiated a settlement with the SEC. Some of the other parties went to trial and lost. That proceeding occupied a great deal of my time for several years. There were lots of depositions and arguments and many meetings with the SEC. I think it is worth my pointing out at this point that unlike the situation in 2013, there was much less specialization of the bar in Washington in the 1970s, so that while I was not an SEC specialist, that was not my basic area of law, it was possible for lawyers like me to be asked to take on significant matters outside of our particular specialty. I was

not a communications lawyer either, but I was asked to argue this significant fairness doctrine case, which was an important SEC matter, and I was asked to do this representation of this litigation involving the SEC. If I may just interject, I think today that would be more difficult. I think clients tend to want people who are specialists, that is either communications specialist or SEC specialists. Not necessarily, but there is a tendency for that.

Going forward into the mid-1970s, one day in the fall of 1976, I was in Chicago on a matter, and I received a call in the middle of a meeting; a person came into the meeting and said to me that the White House was calling. I was startled, I didn't know what this was all about. I left the meeting. The person on the other end of the phone was a man by the name of Ed Schmults, who had been a partner in White & Case and who was then a member of the White House counsel team for President Ford. He said he needed to see me right away about an urgent matter, and he asked me when I would be returning to Washington. I remember it was a Friday, and I told him I would be catching a plane within several hours from O'Hare, returning to Washington. He then said he would meet me at the airport. I arrived at Washington National, as far as I can remember, late in the afternoon, flying from Chicago. Ed Schmults was there in the parking lot outside of the terminal. He said to me that he had an urgent matter which he wished to consult with me about. We were sitting in his car, and then he said your client is the President of the United States. He asked me if I would be immediately available to meet with President Ford that evening. This was kind of a command performance and I said of course, I would be able to do that. Within

an hour or two, I was in the White House in the Oval Office. There is a small office adjacent to the Oval Office where I met with President Ford. Daniel Rezneck was a partner assisting me, and I asked him if he would immediately come with me. Essentially the matter on which I was consulted involved an issue relating to campaign contributions from a labor union. Charles Ruff, who later became a prominent lawyer here and the U.S. Attorney was the independent counsel investigating this matter. I was being asked to advise the President with respect to the legality of these contributions. I should tell you I found President Ford extremely intelligent and pleasant. We sat in a small conference room outside the oval office for about an hour discussing this. I was asked to take on this representation.

Mr. Pierson: Do you know why you were chosen?

Mr. Krash**:** I don't know, I can only speculate. I think it might have been more understandable for them to have gone to someone who was widely known as a white collar criminal lawyer, like Edward Bennett Williams, but I think they did not want to do, this. Why not, is pure speculation on my part. I think they were concerned if they did that that it might appear to have the coloration of a criminal matter or a more significant matter than it was. Ed Schmults knew me by reason of my representation of White & Case where he was a partner, and I think he had a decisive voice in the selection of counsel. But I don't really know why they chose me. Anyway, I handled this matter during the midst of the campaign of the 1976 presidential campaign. I didn't see the President again. I did see his general counsel and Ed Schmults a number of times. We persuaded Mr. Ruff that there was really wasn't much substance here. It went

on for several weeks during the campaign, and he agreed with our presentation or conclusion that there was no serious problem here and he dropped the matter. Subsequently, there was a dinner at the White House, and I was invited, along with my wife, Joan, to dinner at the White House. That's is the only occasion in which I ever went to a White House dinner. It was a splendid occasion and event. They really do it elegantly. Subsequently, I received a very nice letter from President Ford thanking me for helping him, but I never saw him again. That was the only occasion, as I say I had any dealings with him or met him. I had a very favorable impression of him because of the type of person he was. He was incisive and intelligent, and he was very friendly, of course.

Also, sometime in the mid-1970s, at or about this time, I got a call from the Dean of the Yale Law School, Abraham Goldstein. I had previously mentioned, I think in our first interview, that he had been an associate of Raoul Berger, and I succeeded him there as an associate. Goldstein left Berger's office to clerk for Judge Bazelon on the Court of Appeals. He then practiced briefly here in Washington in the mid-1950s, and he then went to the Yale Law School as a professor. By the mid-1970s, at the time when I received this call from him, he was the Dean of the Yale Law School. Goldstein was an exceptionally able person and a very fine lawyer. He was a very distinguished, criminal law scholar. He came to my house to see me. He said he wanted to invite me to come to Yale to be a visiting lecturer. He proposed that I offer a seminar at Yale. He asked if I would be interested in doing that the following year. The idea was that I would fly to New Haven

and teach once a week. I had been a graduate fellow there. I also knew a number of the members of the faculty; they were friends. This was a very appealing idea to me and so I suggested to Goldstein that I could offer a course which I thought they didn't have; I thought I might be able to make a contribution. I said I could offer a course in Complex Litigation. Goldstein was very enthusiastic about that and said that would be great. To make a long story short, I then prepared the seminar which I offered the following fall at Yale Law School. I would fly to New Haven each week. I thought the students were very gifted. Not all, but many of them, had graduate degrees, and they were very smart. They were very interested and engaging; it was a small seminar consisting of about 25 or 30 students as I remember. It was very pleasant because I would stay for dinner with members of the Yale faculty who invited me to meet with them. I valued that experience a lot. There were a number of very interesting people there. I did this for four years, that is with a break for two years, and then for two more years. It is an experience that I've looked back at with pleasure. I made it a policy that I would never try to recruit any of these students to my law firm, even though my mouth watered at the thought of having some of them, but I never did. A few of them later did show up and did come here, but I was very meticulous about not recruiting them. I thought that many of them were exceptionally gifted young people.

Mr. Pierson: With respect to the course, as a seminar, did they write papers?

Mr. Krash**:** They took exams. I took as a theme of the seminars something I had been taught by Judge Arnold. Arnold had a very striking insight. He said that the rules of procedure can be thought of as techniques or ways to speed up a case

or to slow down a case. I had never thought of the rules that way. I wanted to demonstrate to students various tactics or strategies which were used by lawyers either to speed up a case or to slow it down and show them what went on in litigation. I took some of the cases I had worked on, including pleading arguments and briefs, which they normally were not familiar with. The students were very interested. A lot of them had in mind, I think, or a hope that they would become litigators. I was able to contribute something to the law school, which I don't think they had at that point. The Yale Law School, I think, expected that a number of students would enter public service and also that a number of them would become law school teachers. A considerable number of the graduates however, went into practice. They were very welcoming and cordial. I greatly enjoyed that experience at Yale.

Going back to the things I was doing for various clients, I did a lot of work for Philip Morris. I did not do product liability work for them, which our firm did later, that is in representing them in tort cases that were brought by people claiming they had been injured by smoking. My role was primarily dealing with Washington issues. In the early 1970s, Philip Morris acquired Miller Beer, which is located in Milwaukee. That was its basic location. It was then a relatively small beer company. The beer industry was dominated by Anheuser Busch. The person sent out by Philip Morris to manage Miller Beer was a man by the name of John Murphy. He was sent from New York to Milwaukee as the chief executive to run Miller Beer. Murphy was a lawyer whom I had come to know while doing other work for Philip Morris, and we became very good friends. He was a very engaging person, and an exceptionally able

executive. When he arrived in Milwaukee, he immediately got in touch with me, and he asked me to come out there. He made clear to me that he wanted me to play an active role in advising him about problems with Miller Beer, and I did that. One day, sometime in the mid-1970s, he said we have an opportunity to acquire a product called Light from a brewery in Chicago by the name of Meister Brau. Light then was an insignificant brand; it was basically being marketed to women. Murphy had a gleam in his eye that he could take this brand and transform it. It was a point when the antitrust authorities were challenging acquisitions, especially in highly concentrated industries, like the beer industry. Miller Beer was a small firm at this point. It was a very touchy question whether they could make this acquisition. Anyway, Murphy went forward with the acquisition. His action transformed the beer industry. He took this Light Beer, that was essentially being marketed to women, and he transformed it by marketing it differently. He developed a slogan: "Tastes Good, Less Filling." The idea was that you can have a good tasting beer of low calories that would be an attraction to young men. It transformed the whole beer industry. It was the beginning of the development of light beer products. Anheuser Busch now has its own light beer product, which is a very successful product. In any event, Murphy built up Miller Beer, which had been a relatively minor factor in the beer industry at that time. As I said, I was counsel to him in many ways. He frequently called and consulted with me and invited me to Milwaukee many times. It is a dreadfully cold place in the winter time. I got to be friends with a number of the executives and people there and to work closely with them. We had one important case

for them which was called the *Universal Brands* case. What happened was that Miller Beer was appointed as the American distributor for Lowenbrau, which is a beer made in Germany. Miller wanted to have that product distributed through the Miller Beer wholesalers. They terminated the wholesale distribution arrangement of existing wholesalers and transferred the product to the Miller wholesalers. One of the wholesalers, who was cut off, Universal, sued Miller in Florida claiming this was a violation of the anti-trust laws. We won that case. It was clear that a company could change its distributors. At the same time, I was also deeply involved during this period in the 1970s in advising Philip Morris, and I have to take a minute to explain something about what's going on in the cigarette industry. When we began to represent Philip Morris, in late fall of 1963 the cigarette industry consisted of six companies. Philip Morris was the sixth, the smallest with only about 6% of the market. The three major cigarette companies and brands were R.J. Reynolds, which was the manufacturer of Camels; American Tobacco, which was the manufacturer of Lucky Strikes, and Liggett & Meyers which manufactured Chesterfields. Those three companies between them accounted for about 75% of the market. Philip Morris in the mid-1960s acquired a product called Marlboro, which was a filter cigarette, basically marketed at the time to women. I don't know who, but some of the Philip Morris executives had the idea to transform this product by using a cowboy to advertise it. To make a long story short they built Marlboro into one of the world's greatest brands. I read an article recently that described Marlboro as one of the world's best known brands. What happened was that Philip Morris

which was a number six company at the time when I came on board and started to advise them, kept growing and developing and it came to the point where it became finally as of today, the leading company in the cigarette industry.

During this period of which we're talking about (1970s) they called on me for many matters. Basically I was their Washington counsel, I was not doing corporate or product liability work for them. They had separate counsel for that. There were many serious issues that I was asked to advise them about, I got to know them very well. They were an exceptionally well-managed company. They were very cordial, helpful and supportive of lawyers, and they valued and trusted lawyers.

Mr. Pierson: From starting as an associate, when you are assisting Abe Fortas, and other senior partners at Arnold, Fortas & Porter, you have now become principal counselor and trust advisor, regulatory advisor, you know, uncovering the spectrum.

Mr. Krash**:** By this point, I was in my mid-forties and in the meantime, Arnold & Porter was growing and thriving. A lot of these clients obviously required additional partners and associates. We kept growing. People like Stuart Land, Dennis Lyons, Bud Vieth and Bill Rogers were making tremendous contributions to our firm. It was a period of growth for the firm. The period for me was a time of great opportunity; it was an exciting and interesting time. It was a good time to be a lawyer in Washington because companies needed advice with respect to Government regulations, and we were in a

position to give them that advice.

I represented Lever Brothers until early 1970s and then other lawyers in the firm took it over. Unilever had two subsidiaries in the United States, Lever Brothers, whose headquarters are in New York, and Lipton, the tea company. I did work for Lever Brothers, and also I did a little work for Lipton. I was also counsel for Unilever, the parent company, whose offices were located in London and in Holland. I was invited to come on several occasions to London and to address the Board of Directors about American problems. I enjoyed that experience. London is a wonderfully interesting city. When I was going there in the late 1960s, London had begun to recover from the war, and I got to know some of the senior people at Unilever, which is a great world company. They have branches all over the world. I was invited into their inner circle to talk with them about issues relating to the United States. I did that in the late 1960s and early 1970s.

Sometime in the mid-1970s one of the folks in our office asked me if I would be willing to go to Germany. I had never been to Germany. Our firm had represented some German clients and so I thought this would be an interesting thing to do. I went to Frankfurt, and we counseled a German company. That was my initial trip to Germany. I remember coming there and the executives we were meeting wanted to take us to lunch after we had flown over night. There was a Pan American flight to London and then we flew to Frankfurt. Anyway, we were quite tired because of the overnight flight. They wanted to take us to lunch and they took us to an eating house, which was beautiful, going back to World War I, I think. They had marvelous food and German

wine. They were very gracious to us. Frankfurt still showed signs of bombing from World War II, when I as there. I have a vivid memory of going to Germany and talking to these folks about the problems they had in the United States.

Going back to my work for Philip Morris, in the early 1970s Philip Morris decided to diversify, and they made three major acquisitions. The first was Miller Beer. I was not involved in that acquisition, but I subsequently became deeply engaged in representing Miller. Philip Morris acquired two other companies that I was involved in. First, they acquired General Foods, which is a food manufacturing company and I was involved in counseling and advising about that. Sometime in the 1970s they decided they wanted to get into the soft drink business and they acquired the 7-Up company, which is located in St. Louis. 7-up retained us for various matters. We traveled to St. Louis to meet with them on a number of occasions.

In the mid-1970s, I was retained by a Sperry Rand, which was a computer manufacturer at that time with offices in Philadelphia. Subsequently they became Univac. They had some matters that they wanted to consult me about. I had an opportunity to see what the computer industry was like in its infancy. I went to Philadelphia and talked to their technical people, and it was fascinating. I witnessed dramatic transformations in three great industries by virtue of the relationship I had with different companies. Univac was one, although they were called Sperry Rand at that time. They developed the main frame computer. They were the pioneers in developing computers, not IBM. Sperry thought that what you should do is sell the computer. IBM had the

great insight that what you should do is to lease it to customers. As it turned out that was a much more effective method of introducing the computer, because people didn't know what the computer was. To make a long story short, IBM quickly outpaced Sperry Rand, because people weren't knowledgeable about computers. Sperry was trying to sell it and IBM was trying to lease it, and I think customers felt more comfortable leasing it than buying it. Sperry was an innovator and a pioneer in computers in a very dramatic way. They were the pioneers but they began to lose out to IBM which became enormously successful and a dominant company. I witnessed this transformation of the computer industry at that stage.

The second industry I saw transformed was the detergent industry, where we were representing Lever Brothers. Beginning in the late 1940s, Abe Fortas had been retained as Lever's counsel. At the time we began to work for them, the detergent industry consisted primarily of Procter Gamble, Lever Brothers and Colgate. Procter Gamble was somewhat larger and had about 30% of the market, Lever Brothers had about 25% and Colgate was somewhat behind. Then promptly after World War II ended, Procter & Gamble introduced in the market a synthetic detergent, that is a detergent made from a petroleum derivative as distinguished from one made from fats and oils. It was called Tide. Within a few years, Tide became overwhelmingly dominant. It was enormously successful. It was brilliantly marketed. Lever Brothers knew about this technology, but it was slow in introducing a synthetic detergent. So the industry was transformed. Procter became by far the dominant firm in the detergent industry by virtue of their being able to develop this product

Tide, which is still on the market. It was brilliantly marketed by Procter and developed by them. Lever subsequently came out with a detergent called Surf, but it did not compete successfully with Tide.

Mr. Pierson: Surf sounds demeaning to Tide.

Mr. Krash**:** As I said, Procter then became dominant. I have not represented Lever for many years, but I understand that they sold their U.S. detergent business a few years ago. Procter still remains, I believe, a very successful detergent company.

The third industry where I saw dramatic changes was the cigarette industry. Philip Morris, at the time we began representing them in 1963, was the sixth ranking company, but they perceived the future of the filter cigarette. In particular, they marketed it in a spectacular way. Some of the other companies, particularly American Brands, did not perceive that the market was going to be transformed that way. Philip Morris emerged in the end as the premier company. It is interesting to see how various marketing decisions profoundly affected what happened to various companies.

Mr. Pierson: Marlboro was purchased by Philip Morris? Was there any indication of concerns with the medical impact of cigarettes that filters would be more desirable?

Mr. Krash**:** You have to remember the Surgeon General's report came out in 1964 saying that smoking cigarettes is hazardous to your health. So, yes, the filter cigarette was developed partly in part, in response to the feeling that it would be a safer, less hazardous cigarette. Some people thought so, I think,

at the beginning. That was one aspect of it. In the computer industry, Sperry Rand was technologically more advanced than IBM, but IBM had the great marketing insight that you should lease it to customers rather than sell it. Procter & Gamble had the insight that a synthetic detergent made from petroleum derivatives had various advantages over something that was made from fats and oils. Again, it was about marketing. I had a grand stand seat watching what was going on during all these periods of counseling and advising people about it. Philip Morris, of course, succeeded spectacularly, whereas Sperry and Lever Brothers were less successful, although there were very good people at those two companies.

We have talked a lot about what I was doing professionally. I thought maybe I'd take a few minutes to talk about what is going on with my personal life during this time. In the mid-1970s, I had two daughters growing up, Jessica and Carla. Jessica went to Harvard and later to Julliard, and subsequently got a doctorate degree from the University of Maryland. She is a professor of music and a composer. She composes and teaches music. She has two discs of her music that are now out. My other daughter, Carla, is also artistic. She went to the Rhode Island School of Design in Providence and became a clothes and furniture designer. She lives in Philadelphia. Jessica lives in Washington, DC. Joan and I in the 1960s purchased a home in Somerset in Chevy Chase. We were fortunate to find a house with a three-quarter lot on a dead-end street. In the mid-1970s, we acquired a summer place in Truro on Cape Cod. It is a beautiful area. The National Seashore surrounds us so it has retained its beauty. We have a house sitting on a hill

which overlooks the bay.

Joan and I have also travelled a great deal. We went to England, France, Italy, and Greece. We went to the back of the Iron Curtain at a later date. We went to Israel several times, and we also went to the Far East. We went to Japan, China, Cambodia, Viet Nam. We also went to Alaska and Hawaii and to the Galapagos. We traveled a lot. We also took a number of trips to the West to Wyoming and to Colorado. I have no family left in Wyoming, and very few of my school day friends there are alive. But I still have an affection for that part of the world. I grew up in Cheyenne; it is not a particularly pretty place, but Laramie, 40 miles away is quite beautiful, and what's even more spectacular and beautiful is the Northwest corner of Wyoming where Yellowstone is located. Apart from all these things, I would say that I greatly love classical music, and Joan and I have attended many concerts. On the sad things in my life was that I never learned to play an instrument. My daughter, Jessica, plays the piano beautifully, but I never learned to play. I greatly like the theatre. I love plays. I am greatly interested in art. Joan and I have visited museums throughout the world. I'm also a film-buff. I like the movies a lot.

Mr. Pierson Any particular kind?

Mr. Krash**:** Good movies. One of the things that took me a long time to learn was how to balance my professional life with my and personal life because my work was very demanding and kept me very busy and deeply engaged. Joan greatly encouraged me to travel to new places and to expand my horizons. Beginning in the early 1970's, Joan enrolled in the graduate psychology

program at American University. She obtained a Ph.D. degree and had extensive training in psychotherapy. She became a psychotherapist and practiced for almost thirty years. She was also deeply involved for many years with the Washington School of Psychiatry. She served on the Board of Directors of the schools. That is essentially what was going on in the 1970s.

Mr. Pierson: May I stop you for a minute and ask you about grandchildren?

Mr. Krash**:** Yes, my daughter, Jessica, was married in the mid-1980s, and she has three children. She had twins, Zachary, a son, and Rachel, a daughter, who are now 27. My father was a twin. Zachary went to college at Haverford College and now is in San Francisco counseling homeless people. Rachel is a graduate of the University of Chicago College and is now contemplating going to Graduate School. Francesca, the third daughter, is presently a sophomore at the University of Chicago. Our other daughter, Carla, as I said, went to the Rhode Island School of Design in Providence and became a clothes designer. She adopted a daughter named Jinx. She went to China and adopted her. She turned out to be a pistol. None of my grandchildren are married, so we do not have any great grandchildren. My daughter, Jessica, lives nearby in Chevy Chase so we see a good bit of her and her family.

Oral History of Abe Krash
Fifth Interview
December 16, 2013

This interview is being conducted on behalf of the Oral History Project of the Historical Society of the District of Columbia Circuit. The interviewee is Abe Krash, Esquire, and the interviewer is Stuart Pierson, Esquire. The interview took place on December 16, 2013. This is the fifth interview.

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

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

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

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

Mr. Pierson: Was there litigation?

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

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

a good deal and that was a very enjoyable experience.

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

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

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

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

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

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

Mr. Pierson: They were teeming with people?

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

exciting trip, and I enjoyed it immensely.

Mr. Pierson: When did your wife go back?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. Pierson: Jurisdiction vertically or horizontally?

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

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

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

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

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

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

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

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

Mr. Pierson: How did the clients take that?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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Abe Krash received a law degree from the University of Chicago in 1949 and was a graduate fellow at the Yale Law School. He has been a visiting lecturer at Yale Law School and is presently Visiting Professor from Practice at the Georgetown University Law Center where he teaches Constitutional Law. Mr. Krash is the author of numerous articles on topics relating to constitutional law, antitrust and trade regulation, criminal law, and federal civil procedure. He was for many years head of the Arnold & Porter antitrust practice group, and he was President of the Friends of the Law Library of Congress. Mr. Krash was counsel for many major companies, including among others Miller Brewing Company, Kraft General Foods, Philip Morris, Lever Brothers, and Monsanto, in all kinds of proceedings.

Articles

- Abe Krash "The Architects of the Gideon Decision: Abe Fortas and Justice Hugo Black" *Texas Law Review*, Volume 92, No. 5, April 2014
- Abe Krash "Sounding The Trumpet: The Gideon Case" 1996
- Abe Krash "Insanity and the Law, Part II: Toward A Saner Insanity Defense--The Durham Case" 1996

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- Advice to and representation of Volt Information Sciences, Inc., a $2 billion public company, for internal investigation and SEC matters (2009-2013).
- Representation of official of national housing company in response to federal allegations of kickbacks (2008).
- Internal investigation for Security National Bank, a regional bank. Resolution of internal needs and compliance remediation (2007-2008).
- Representation of government sub-contractor in response to investigation of alleged gratuities provided to military transportation officials relating to award of shipping business (2004-2007).
- Representation of Stiles Kellett, chair of the Worldcom Board of Directors' Compensation Committee in class actions and over 100 individual actions consolidated in the Southern District of New York arising from the collapse of WorldCom, Inc. (2004-2006).
- Representation of federal government lawyer in criminal investigation concerning allegations of inappropriate conduct in a sentencing proceeding (2006).
- Representation of global technology company in federal investigation of municipal procurement fraud (2000-2003).
- Representation of former employees of the Democratic National Committee in investigations by both houses of Congress and the Department of Justice concerning campaign financing (1997 - 2000).
- Representation of former Congressman Charles N. Wilson in various federal investigations as he was the principally effective advocate for assistance to the Afghan resistance to Soviet occupation. (1983-1999) See also *Charlie Wilson's War*, Atlantic Monthly Press.

Compliance

Advice to clients on the established elements of an effective compliance plan for public and private business and regulated entities, including Sarbanes-Oxley requirements, Federal Sentencing Guidelines, Department of Justice and Securities and Exchange Commission policies.

Complex Litigation

- *Omaha Public Power District v. Union Pacific Railroad Co*., District Ct., Douglas Co., NE: Representation of utility on claims for breach of contract and negligence for failure to maintain defendant railroad's roadbed and infrastructure in the Powder River Basin, causing failure to deliver required coal supplies (2007-2008).
- *Contract Arbitration:* Representation of Midwest utility in response to an arbitration claim that it had intentionally undermined sale of a substantial company asset (2003-2004).
- *United States v. Church, et al.*, S.D. WV: Representation of second defendant charged with conspiracy to obstruct a federal bank examination (1999 - 2002).

Early Landmarks

- *U.S. v. Washington*, 384 F. Supp. 312 (W.D. WA 1974) (the “Boldt Decision"): lead plaintiff’s counsel for the judgment recognizing Indian off-reservation treaty fishing right of Pacific Northwest Indians to take up to 50% of the harvestable salmonid stock as the supreme law of the land. Judgment revolutionized Pacific Northwest fisheries management, and steadily improved the lives of the Indians. Upheld in four Supreme Court challenges.
- *Martin Marietta v. Evening Star*, 417 F. Supp. 947 (D.D.C. 1976): counsel for defendant newspaper in establishing that public corporations have the same First Amendment burden as individuals to prove actual malice to recover for defamation on a matter of public interest.
- *Manuchar Ghobanifar* (mid-1980s): Counsel for the Iranian middle man in the Iran Contra affair, who was never charged or required to testify in the grand jury or congressional proceedings.

Legal Ethics

Chair, D.C. Court of Appeals Committee on the Unauthorized Practice of Law (1992-1998).

Selected Publications

- Author of "*Responding to a Criminal Investigation*," Privacy & Data Security Law Journal, June 2007.
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- Other periodic publications concerning cases and representations, and articles in media periodicals on developments in the law.

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- U.S. Supreme Court
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