# ROBERT KAPP, 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**

# ROBERT KAPP, ESQUIRE

**Interviews conducted by Irvin Nathan, Esquire**
**March 13, 20, and 27, 2017**

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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 for Interviewee**

## INTERVIEWEE ORAL HISTORY AGREEMENT

Historical Society of the District of Columbia Circuit

Oral History Agreement of _____

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, Robert H. Kapp, do hereby grant and convey to the Society and its successors and assigns all of my rights, title, and interest in the voice recordings (digital recordings, cassette tapes) and transcripts of my interviews as described in Schedule A hereto, including literary rights and copyrights. All copies of the voice recordings (digital recordings, cassette tapes) and transcripts are subject to the same restrictions herein provided.

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

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

R S H Kapp 8/8/2017

[Name of Interviewee] [Date]

SWORN TO AND SUBSCRIBED before me this 8th day of August, 2017.

Sandra Hall

Notary Public

My Commission expires: March 14, 2022

ACCEPTED this 21st day of August, 2017, by Stephen J. Pollak, President of the Historical Society of the District of Columbia Circuit.

Stephen J. Pollak

SANDRA HALL NOTARY PUBLIC EXP. 3-14-22 DISTRICT OF COLUMBIA

## Schedule A

Tapes recordings, digital recordings, transcripts, computer diskettes and CDs resulting from three interviews of Robert Kapp conducted on the following dates:

| Interview No. and Date | Number of Tapes or CDs | Pages of Final Transcript |
|---|---|---|
| No. 1, March 13, 2017 | } | 1-23 |
| No. 2, March 20, 2017 | }All on one CD | 24-53 |
| No. 3, March 27, 2017 | } | 54-81 |

The transcripts of the four interviews are on one CD.

**Standard Form for Interviewer**

The Historical Society of the District of Columbia Circuit

Oral History Agreement of Irv Nathan

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

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

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

Irvin Nathan
September 7, 2017

SWORN TO AND SUBSCRIBED before me this
7th day of September, 2017.

Sharon Byers-Jones/Notary Public

My Commission expires: March 31, 2019

ACCEPTED this 22nd day of September, 2017, by Stephen J. Pollak, President of the Historical Society of the District of Columbia Circuit.

SHARON CAROLYN JONES NOTARY PUBLIC DISTRICT OF COLUMBIA Expires Mar 31 2019

Stephen J. Pollak

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# ORAL HISTORY OF ROBERT H. KAPP

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

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

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

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

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

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

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

MR. NATHAN: Squatter?

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

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

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

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

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

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

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

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

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

MR. NATHAN: Have you been close to her?

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

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

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

MR. NATHAN: Were the chemist and pharmacist impressive?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MR. KAPP: I did not.

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

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

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

MR. KAPP: I did.

MR. NATHAN: What did you do?

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

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

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

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

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

MR. KAPP: I did.

MR. NATHAN: What were your hobbies?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MR. NATHAN: What was your college experience like?

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

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

MR. NATHAN: What fraternity were you in?

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

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

MR. KAPP: I did not.

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

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

MR. NATHAN: At Penn?

MR. KAPP: Yes.

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

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

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

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

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

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

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

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

MR. NATHAN: And how did you pick Michigan?

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

MR. NATHAN: Why was that?

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

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

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

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

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

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

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

MR. NATHAN: Did you apply to those?

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

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

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

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

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

MR. KAPP: No. The entire university

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

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

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

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

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

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

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

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

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

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

MR. NATHAN: How many grandchildren?

MR. KAPP: We have ten grandchildren.

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

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

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

MR. NATHAN: Because of the antitrust connection?

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

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

MR. KAPP: It might have made a big difference

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

MR. KAPP: Yes.

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

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

MR. NATHAN: On the editorial board?

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

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

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

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

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

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

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

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

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

MR. KAPP: I graduated from Michigan in 1958

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

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

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

MR. NATHAN: A bar meaning a prohibition?

MR. KAPP: A prohibition, yes.

MR. NATHAN: Not a group of lawyers?

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

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

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

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

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

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

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

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

MR. KAPP: Ok.

ORAL HISTORY OF ROBERT KAPP

This is the second interview session of Robert Kapp on behalf of the Oral History Project of the U.S. Circuit Court of the District of Columbia. The interviewer is Irv Nathan. The interview is being conducted at Mr. Kapp's office at Hogan Lovells in Washington, DC on Monday, March 20, 2017, at 3:00 p.m.

MR. NATHAN: Okay, Bob, at the end of our last interview we talked about issues during your childhood and the school you went to, and I thought you might want to amplify on what you said last time.

Mr. KAPP: Yes. Well I think where we left off is during the period when I was at the Stone School.

MR. NATHAN: Which was your elementary school?

MR. KAPP: Elementary school. From the time I was ten years old to thirteen years old. I was released from school at 2:45 in the afternoon, technically maybe 3:00, and I immediately wanted to head out to the ball field to play baseball or football depending on the season. But, the problem was that my parents had signed me up at the local synagogue for Hebrew lessons which went on for four days a week -- Monday through Thursday -- and it started at 4:30 in the afternoon. And it was about a half hour walk from my school. So generally in the middle of a game I had to pick up and leave and I was a very, very unhappy camper. And particularly because my father had insisted that I do this and my father himself was not a religious person at all but he thought that I should be I guess. And in any event that was a childhood problem that's in some funny way stuck with

me until now.

MR. NATHAN: And did you have a Bar Mitzvah?

MR. KAPP: I did have a Bar Mitzvah when I was thirteen. And that was really the last time that I took any active part in any kind of religious involvement.

MR. NATHAN: And you think that your Hebrew training had any impact on the values that you've exhibited in your career?

MR. KAPP: I suppose discipline. (laughs)

MR. NATHAN: (laughs) And also the fact that you are not a professional athlete.

MR. KAPP: Yes, well, otherwise I would probably be out there in the field today.

MR. NATHAN: So we finished up when you had graduated from law school I think last time and I wanted to ask you about the recruiting by law firms and the Department of Justice in your last year of law school.

MR. KAPP: Yes, in my third year of law school I interviewed a number of law firms. Large New York and Chicago law firms primarily and I also interviewed with the Department of Justice. The problem with large New York and Chicago law firms, the most prominent ones, is at that time, which was in 1958, those firms did not have or invite any Jewish lawyers. So while there were some opportunities in some smaller firms, among the firms that I thought I would be most interested in there was really no opportunity at all. And then I was interviewed by the Assistant Attorney General for the Lands Division

at Justice who was a gentleman by the name of Morton. And he made a very good impression on me and I think I mentioned in our last session that I had made two trips to Washington when I was in high school and was kind of enthralled by the idea of coming to Washington. And in fact, one of my professors at Michigan, my antitrust professor – Professor Oppenheimer – had encouraged the idea of public service and he had been at one point in the Antitrust Division at Justice. And so the combination of those two or three things led me to be interested in coming to the Department of Justice and they did extend an offer for what was then and still may be the Attorney General's Honors Program. And I accepted the position, went back to Chicago to take the Illinois bar exam during the summer, and then at the end of August I came to Washington and took the position with the Department of Justice.

MR. NATHAN: And at the Department did you have a choice of what division to join?

MR. KAPP: They asked for two priorities -- two preferences -- and I selected the Tax Division as one choice and the Antitrust Division as my other choice. They determined to assign me to the Tax Division and that's where I spent the entire time that I was at Justice.

MR. NATHAN: Do you recall what the salary comparisons were at the time in law firms and the Department of Justice?

MR. KAPP: I do remember what my salary was. I think it was $3,700 until I passed the bar at which time it became about $5,000 dollars. Then I think law firms at that time were not terribly higher than that. I think they were maybe in the six or seven thousand dollar range; very different then from today.

MR. NATHAN: I assume that the salary comparison didn't play into your decision.

MR. KAPP: That was not a factor, no.

MR. NATHAN: Did you give any consideration to clerking for a judge?

MR. KAPP: I did not. We're talking about clerkships?

MR. NATHAN: Yes. Clerkships.

MR. KAPP: I'm sorry. I did not and again that was not a very common practice at the time. One of my classmates, who was the chief editor of The Law Review, did clerk in the Supreme Court but there were not the district court clerkships and the appeals court clerkships at least in the volume that they are today.

MR. NATHAN: And none of the professors at Michigan suggested clerkship to you?

MR. KAPP: They did not. No.

MR. NATHAN: When you made the decision to go to the Department of Justice did you have any long-range goals in mind with respect to your professional career?

MR. KAPP: Yes. I thought at that time that I was likely to want to practice tax law and I certainly had the idea that I would not make the

government my lifetime career. That I would eventually try to join a law firm. And what I had in mind was that I'd spend several years in the Department of Justice and then go back to Chicago. That's where I had grown up and that was my target. My thinking changed very much as I spent time in Washington and I decided that if the opportunity presented itself to practice in Washington then I'd like to do that.

MR. NATHAN: What was happening in the political world when you joined the Department of Justice? What were the issues that were in the forefront?

MR. KAPP: It was a fairly quiet time actually. I joined the Department during a Republican administration; during the Eisenhower administration. The Assistant Attorney General for tax was a gentleman by the name of Charles Rice and I believe . . .

MR. NATHAN: Was Herbert Brownell the Attorney General?

MR. KAPP: No. Herbert Brownell had stepped down by the time that I got there and I think, and I'm not sure of this, but I think it was William Rogers who was the Attorney General at that point. It was, politically, a fairly quiet time and the truth be known I was not very much attuned to political matters in those days. During the time that I was at Justice, John Kennedy was elected President and Robert Kennedy became the Attorney General. And at that time I thought it

was a very poor choice but as time went on and I suppose we'll get to this later, I did become quite high on Robert Kennedy and worked in his presidential campaign. The first thing I recall after he came to Justice is that he invited underlings like myself in the Department to come up in groups of maybe ten or twelve and meet with him in his office. I remember sitting out in the anteroom and the door was cracked open a bit and I looked through the top and I saw there was a football going back and forth. It was Attorney General Kennedy and Whizzer White, who was his deputy, and who of course had been an all-American football player.

MR. NATHAN: Why don't you describe your experiences at Justice?

MR. KAPP: Yes. I was assigned at first to the Criminal Section of the Tax Division. The Internal Revenue Service made recommendations to the Department of Justice with regard to the criminal prosecution of various people involved in what they believed to be tax crimes; and our job was to evaluate those recommendations, analyze them and make a recommendation to the Assistant Attorney General for Tax as to whether a prosecution should go forward. He, in turn, made his recommendation to the Attorney General. And that was determinative. So I did that for about maybe ten or eleven weeks; then I was called up for basic training in the Air National Guard. So I went off for eleven weeks to Lackland Air Force Base in Texas for

my basic training and then when I came back in January, I was assigned to the Trial Section of the Tax Division. What we did is handle tax refund suits. They were suits in which the taxpayer had to pay the full tax assessment in advance and then sue for a refund. Taxpayers could sue either in the U.S. District Courts or in the U.S. Court of Claims. The other alternative for a taxpayer was to not pay the tax in advance and then initiate suit in the U.S. Tax Court but our responsibility was in the District Courts and the Court of Claims at the trial level.

MR. NATHAN: And did you get much training before you went into court?

MR. KAPP: I was in the Trial Section for three weeks when I was sent out on my first trial and I was sent out without any supervision at the trial itself.

MR. NATHAN: Were you the lead counsel in the . . .

MR. KAPP: I was the lead counsel. But before I left, Arthur Biggins, who was a senior lawyer in the Tax Division, took me through the process of examining what would be the key witness in the case which I guess would be the taxpayer. And I spent much of a day with him going through the steps that I would take at trial. Then I packed my bag and off I went and conducted the trial. And it was an example of the approach that the Department took in the training of lawyers; at least in the Tax Division, maybe otherwise in other divisions. But the thought was that it was on-the-job training; that you would learn by

doing. It was in great contrast to what I've seen in major law firms where young lawyers in litigation spend long periods of time taking depositions and then go out with a senior partner, maybe two. Eventually, they would get to examine a witness. So what I found when I later got to Hogan & Hartson that surprisingly although I was recruited to go into the Tax Department of the firm, I probably had more in-court trial experience than most of the associates and even the younger partners in the litigation practice of the firm. This is not necessarily the most ideal training program and you probably don't end up with a product that is as good as these major law firms end up with but it was certainly a lot more fun.

MR. NATHAN: How'd you do on the first case?

MR. KAPP: I don't actually remember how I did on the first case. I would say I won most of my cases though not exclusively.

MR. NATHAN: Was there discovery before you went to trial?

MR. KAPP: There was discovery. It tended to be fairly modest. Mostly, interrogatories and requests for admission. The cases tended to be fairly small cases, with one or two significant exceptions. One case which I tried in Philadelphia involved a tax refund suit by Kraft Foods. The counsel on the other side was George Cleary, the senior partner of the firm Cleary, Gottlieb. I expected him to come up with a whole army of associates and, much to my surprise, as I was

standing on the outside of the courthouse, there was this elderly man coming up the steps and it was George Cleary carrying his own bag. We tried that case; I actually won that case. He was quite a gentleman.

MR. NATHAN: Were these cases in the District Court; Federal District Court for the most part?

MR. KAPP: For the most part they were in Federal District Court. We handled cases all over the country, except for New York, the Southern District of New York, and the Southern District of California (Los Angeles). .

MR. NATHAN: Central district.

MR. KAPP: Central district is it. Yes. It excluded San Francisco as well. As I said, we tried cases all over the country except in those two jurisdictions where the U.S. Attorney handled the tax cases. So I tried cases in Philadelphia; Louisville, Kentucky; Oxford, Mississippi; Akron, Ohio; I think Lexington, Kentucky; just all over the place and . . .

MR. NATHAN: Were these jury trials?

MR. KAPP: They were not. I never had a jury trial. They were all judge trials.

MR. NATHAN: Did the taxpayer have the right to ask . . .

MR. KAPP: The taxpayer did have the right to ask for a jury trial.

MR. NATHAN: But they all waived the right to a jury trial?

MR. KAPP: They waived it; yes.

MR. NATHAN: And I take it there's no jury in the Court of Claims?

MR. KAPP: No. And I did try one or two cases in the Court of Claims which was located here in Washington.

MR. NATHAN: Were any of the cases in the Federal District Court here in DC?

MR. KAPP: No. They were not.

MR. NATHAN: Did you detect any hostility being from Washington, DC and going out into places like Oxford, Mississippi and the other places where you tried cases?

MR. KAPP: I really did not. I thought most of the counsel were really quite friendly and courteous. Treated us as fellow professionals.

MR. NATHAN: I was referring more to the judges.

MR. KAPP: The judges. No I didn't really think so. The one interesting example I think was the case that I handled in Oxford, Mississippi. We ended up settling the case. I flew into Memphis and then I took a bus from Memphis to Oxford and one of the things that I observed on the way as we got off the bus midway and there was a cafe there which was called the colored cafe. I thought it was like McDonald's.

MR. NATHAN: Like a rainbow.

MR. KAPP: It turned out it was in fact a racially restricted cafe. And then I got down to Oxford and, interestingly enough, the federal district judge on the first Friday night that I was down there sponsored a fish fry for the people at the U.S. Attorney's office and, as a visiting attorney, I

was invited to go along. It turned out that he had set up in a still on the outskirts of the area that the barbecue was taking place and you'd go to the still and he'd be there doling out the product.

MR. NATHAN: From the still? (laughs)

MR. KAPP: He was quite friendly. (laughs)

MR. NATHAN: While you were at the Department of Justice did you have any involvement with the bar in DC or civic involvement in DC?

MR. KAPP: I did not. I really didn't.

MR. NATHAN: How long were you at Justice?

MR. KAPP: I was there just under three years.

MR. NATHAN: So shortly after Kennedy came in you left?

MR. KAPP: About a year after he came in.

MR. NATHAN: You said that your views changed. Did they change while you were there or only after you left the Department?

MR. KAPP: About?

MR. NATHAN: About Robert Kennedy.

MR. KAPP: They changed in a big way later than that. I would say in the mid-sixties. I saw that he . . .

MR. NATHAN: This is when he was a senator now?

MR. KAPP: He was a senator and he was advancing programs of social change that I really cared about. He had a very strong civil rights stand. A very strong anti-poverty stand. He had gone to South Africa to make

a speech at the University of Cape Town taking on the whole subject of apartheid there. I was very strongly drawn to him.

MR. NATHAN: What led you to leave the Department of Justice?

MR. KAPP: I knew that I wasn't going to stay permanently and I knew that I was interested in staying in Washington if the opportunity presented itself. I got a call one day from Barrett Prettyman who was a partner at Hogan. He told me that he had been to the University of Michigan to interview law students . . . second and third year law students -- and that he had talked to several professors there about the perceived need at Hogan & Hartson for a younger lawyer in the Tax Department. These two professors, L. Hart Wright, who had been my tax professor, and Professor Oppenheimer suggested that he talk to me. So he called me and asked me whether I would be willing to come over and interview and I did. I met Seymour Mintz, who was the head of the tax group at that point, and I also interviewed with Nelson Hartson who was the senior most partner in the firm.

MR. NATHAN: Did you look at other firms at that time?

MR. KAPP: I did not. I did not.

MR. NATHAN: And did you decide not to go back to Illinois and what led you to stay in DC?

MR. KAPP: Well, I was married. My wife Jean was interested in staying. I had at that point two children and we decided we really were interested in

staying here in Washington. That was pretty much determinative along with the fact that I knew something about Hogan & Hartson and, although I knew it to be basically a local Washington, DC law firm, Seymour Mintz, who was head of the tax group, was a very prominent tax lawyer who had a national reputation and a national practice as did one of the other partners, Tom Plumb. So I saw the combination of staying here in Washington and being able to work with them as a real opportunity.

MR. NATHAN: When you say the firm was a local firm at that time was that mostly local businesses that it represented?

MR. KAPP: There was some national practice. Seymour Mintz had a national tax practice. He represented Republic Steel and Howard Hughes and Libbey-Owens-Ford, the glass manufacturer, and Armour and Company, among others. He had a true national practice.

MR. NATHAN: It was a tax practice?

MR. KAPP: A true national tax practice. There was a little bit of a national practice in the communications area as well. Other than that the firm basically represented local clients but they were the major commercial factors in Washington. The firm represented Woodward & Lothrop and Garfinckels and Riggs Bank and the Evening Star newspaper and the DC transit system public utility. That was the meat of the practice and in fact much of it was litigation

oriented.

MR. NATHAN: How big was the firm at this time?

MR. KAPP: I was the 43rd lawyer in the firm and at one point, when I was at the firm, it was as small as 37.

MR. NATHAN: And how did that compare with other firms in the city at that time?

MR. KAPP: I think that there were no massive firms. At that point, I think that Arnold & Porter and Wilmer, Cutler and Steptoe and Johnson were all about the same size. Covington, I think was a little bit larger. I would be surprised if any of these firms were over a hundred lawyers at that point.

MR. NATHAN: Why don't you describe your practice at Hogan & Hartson from the time you started as an associate and how it developed?

MR. KAPP: Yes. I started as basically a general tax practitioner and, in fact again, unlike today there were really no specialties except for estate planning within the tax area. So I worked on all manner of tax problems and I worked a lot with Seymour Mintz on many of the clients that I mentioned earlier that were basically his clients. I had some of my own clients. I represented a whole group of tennis players which included Arthur Ashe and Stan Smith which came to me through Donald Dell who had been at the firm at one point. I represented Amnesty International, The University of Pennsylvania National Public Radios and the Government of American Samoa.

During all my years in the Hogan Tax Department, a substantial part of my practice consisted of handling tax litigation. I tried a number of cases in the United States Tax Court which sits in Washington, DC. I also handled appeals in those cases which took place in the various United States Circuit Courts. I argued appeals in the First Circuit and the Third Circuit, possibly others.

In addition, I performed many administrative tasks for the firm over the years. I served two terms on the firm's Executive Committee and served as chair of the Diversity Committee.

After about 20 years, the firm took on the representation of the U.S. Government in the takeover of the major northeastern railroads; the principal one of which was the Penn Central. They took them over in something in the nature of an eminent domain type proceeding. Through congressional legislation there was established a special court to handle that litigation. And that special court would sit in the Prettyman Courthouse and was headed by Henry Friendly who was a 2nd Circuit Court of Appeals judge. We represented the government's interest but we shared that representation with Wilmer, Cutler and Steptoe and Johnson. This was a major valuation litigation in which the Penn Central was claiming I think, an eighteen billion dollar recovery. There were all kinds of expert valuation witnesses. I had over the years developed some expertise in the

valuation area. In any event, I was asked to manage the firm's part of the representation. I did so for the next maybe two or three years. I spent very near full time on that representation. There was ultimately a settlement. There had been roughly 25 lawyers at Hogan working on the case and they were suddenly unemployed. So I went back to the tax group. By that time I had developed an interest . . .

MR. NATHAN: What year are we talking about now?

MR. KAPP: It must have been . . .

MR. NATHAN: Early 80s?

MR. KAPP: Yes. Early 80s. I had developed an interest in not-for-profit organizations; the various kinds. Universities, major hospitals, academic medical centers, private foundations, a whole range of organizations and while I continued with a fairly wide range of tax practice I was increasingly involved in the not-for-profit sector and a larger and larger portion of my time was devoted to that.

MR. NATHAN: And how did that come about that you became interested in non-profits?

MR. KAPP: I guess it had to do with something of an interest in what they were doing. This included educational institutions and Amnesty International was a major human rights organization. I had sat on the board of a number of different not-for-profit organizations and I felt very comfortable in that environment.

MR. NATHAN: Did you have some clients that were non-profits that led to this interest?

MR. KAPP: Yes.

MR. NATHAN: You mentioned Howard Hughes.

MR. KAPP: Yes. But we also represented a number of universities. We represented Harvard. We represented Yale. We represented the University of Minnesota in a major matter and also the Howard Hughes Medical Institute for which we had obtained a tax exemption against some very strong political pressure. And a number of major medical centers. Montefiore in New York and we represented Georgetown University and Georgetown Hospital. So then I spent a lot of time on those things.

MR. NATHAN: And this occurred well after you had made partner at the firm?

MR. KAPP: Yes.

MR. NATHAN: When did you make partner?

MR. KAPP: Yes. I came to the firm in 1961 and I became a partner in December of 1965.

MR. NATHAN: After about four years?

MR. KAPP: About four years with the firm, yes.

MR. NATHAN: While you were both an associate and then a young partner at the firm did you participate in the bar or other civic activities in DC?

MR. KAPP: I did. I first became involved in the early 60's. I became interested

in what the American Civil Liberties Union was doing. And I decided that I wanted to take on one or more ACLU cases on a pro bono basis. There was really no history at the firm of people taking on pro bono work other than some things that Barrett Prettyman had done. And the firm was at that time a very conservative institution. And while people were engaged in certain kinds of civic activities they were not engaged in social change kind of activities. I was concerned about how the firm would react to my request to take on ACLU cases, which I made through Seymour Mintz up to Nelson Hartson. I was pleasantly surprised that they felt that if that was something that I felt strongly about and wanted to do they were going to give me the opportunity to do that. That led over the years to a number of like matters where I engaged in various kinds of civic-related activity and the firm tended to support that in a way for which I have always been grateful.

MR. NATHAN: What were the first matters for the ACLU that you were involved in that you needed firm permission to do?

MR. KAPP: I think the first case that I took from the ACLU was… I represented Abbie Hoffman. (laughs)

MR. NATHAN: (laughs) One of the Chicago Eight.

MR. KAPP: One of the Chicago Eight and as I recall it was in a flag burning case. At that time, and for whatever reason, the government decided not to

pursue him on that. They had plenty of other things to pursue him on. So that was the first representation and then there were a number of other civil liberties type cases that I took. In addition, I sat on the screening committee of the ACLU which decided which cases the organization would take.

MR. NATHAN: This sounds like the first time you were involved with civil liberties. You hadn't been involved in college or earlier in your life. What led you to the civil liberties issues at that time?

MR. KAPP: I went all the way through college and I guess all the way through law school without any sense of great civic obligation of any kind or particular interest in that. I had a rather conventional kind of experience particularly at undergraduate school. I think I mentioned the other day that I spent much of my activity at undergraduate school in fraternity activity. But things were beginning to happen in the 60's that really caught my attention and it caught my interest and I was looking for ways to become involved and I remember talking to one or two different organizations and finally catching on with the ACLU.

MR. NATHAN: You also mentioned earlier that you had been involved in the Kennedy campaign which I think was in 1968.

MR. KAPP: Right.

MR. NATHAN: What was your involvement?

MR. KAPP: Yes. In ’68 political campaigns were run very differently than they are today. Rather than major advertising campaigns with a compensated staff of people to run the campaign there were various citizen volunteer organizations. There was a major Robert Kennedy organization; it was denominated Citizens for Kennedy and was operated out of a local office.

MR. NATHAN: In DC?

MR. KAPP: In DC. Peter Edelman was a major factor in running the organization; he had worked for Robert Kennedy. The situation was that Senator Eugene McCarthy had decided to challenge Lyndon Johnson and he had done very well in the first primary; I think it was New Hampshire. In any event after that Robert Kennedy decided to get into the fray and this Citizens for Kennedy group formed. Then there was a Lawyers for Kennedy component which was headed by Bob Wald. They recruited 10 lawyers to send to California to work on the campaign. Kennedy had won primaries in Indiana and South Dakota and the last of the major campaigns was to take place in California. So I went out there for three weeks. I took off from the firm and at that point I thought I was taking off for a much longer period of time.

MR. NATHAN: You took a leave of absence from the firm?

MR. KAPP: I took a leave of absence from the firm and I worked on a range of

things for the campaign. Organizing university professors, campaigning in Orange County and also in Hispanic areas of the city. I did that for these three weeks and I left California on the day of the election. We were done and I headed back home and my plan was that I would continue on with the campaign, particularly if he won California. And, of course, we all know what happened. I got a call at 4:00 or 5:00 in the morning, something like that, from Arthur Rothkopf, who had gone out to California with me, telling me what had happened and that was the end of it.

MR. NATHAN: And you went back to the firm?

MR. KAPP: I then went back to the firm, yes.

MR. NATHAN: I want to ask you about the practice of the firm at that time. Was there much emphasis on rainmaking and acquiring clients and billing clients?

MR. KAPP: There was a lot less than there is today. (Laughter) The firm had a group of established clients; a number of rainmakers in the firm but the business was pretty much shared around. There was some, as time grew on, reward for those people who attracted business. The firm began keeping records of who attracted clients. The emphasis on business production grew exponentially over a period of time to where it became, a very big factor in how people were treated and how they were compensated.

MR. NATHAN: And did you feel any pressure at any point to be a rainmaker enough to obtain new clients?

MR. KAPP: I did, I did, yes. You couldn't live in that environment without feeling a certain amount of pressure to do that.

MR. NATHAN: And when did that take place, was it …

MR. KAPP: That was, let's see, I would say that began maybe in the mid-80s, maybe a little before that.

MR. NATHAN: And can you describe the metamorphosis of the firm because it started as a, representing mainly local businesses, and now it is a national, international firm?

MR. KAPP: International. Over time things began to change. Because I remember early on, shortly after I became a partner, there was a proposal to open an office in Rockville, Maryland. It got shot down on the grounds that it was just too risky to open an office out of Washington. Then slowly but surely things began to change. We opened an office in Baltimore and then made what was then a fairly big move to merge with a firm in New York which had about 200 lawyers and then the ball kept rolling and ultimately Hogan & Hartson had about 1,200 lawyers. Thereafter, they merged with the UK firm Lovells which had about an equal number of lawyers and so today they have 2,400 lawyers, with offices in 45 cities. It's a very different place than when I came with 42 lawyers.

MR. NATHAN: And it wasn't the game plan when you joined the firm that that was how the firm was going to develop?

MR. KAPP: I don't think they really had a game plan.

MR. NATHAN: There was a major case that you were involved in dealing with the tax exemptions. When did that occur and what was the background?

MR. KAPP: Yes, that was again in the 80s, early 80s I think.

MR. NATHAN: After the Penn Central matter?

MR. KAPP: It was after the Penn Central matter. Yes. I'd say it must have been the mid-80s, maybe '87 when we finally got to the Supreme Court. After the *Brown v. Board of Education* case, and the efforts to desegregate the schools in the South, a number of what were characterized as white flight academies organized. These were private schools that were established in various public school districts and drew off the white students; leaving the public schools primarily housing African American students. The effect was to continue school segregation. Those white flight academies had a federal tax exemption which was a critical factor in their financial soundness. We were recruited by the NAACP Legal Defense Fund to challenge the tax exempt status of these white academies on the ground that they were discriminating on the basis of race and we took the case. We developed our complaint, knowing that the major obstacle was likely to be the standing of our clients -- the parents of children of

black public school students -- to sue. We thought we had a pretty good complaint developed to withstand a challenge on that ground. We got to the U.S. Court of Appeals in the District and I argued that case. Now Justice Ginsburg was on that panel and ultimately wrote the court's opinion. They held that the parents had standing to sue and the government appealed the case and obtained certiorari in the Supreme Court. I argued the case in the Supreme Court. We lost on a 5 to 3 decision on standing grounds. Justice Marshall was ill and did not participate in the hearing. The government was represented by Rex Lee who was the Solicitor General at the time. That was the only time in my career that I appeared before the Supreme Court and I found it a daunting experience in every way. As I look back on it, I don't think I prepared for it in most effective ways. There were probably 300 standing opinions and I thought I didn't want to get caught up on being asked about a particular decision and not knowing anything about it. So I spent *much* too much time reviewing standing cases when I should have spent more time on moot courts.

MR. NATHAN: Did you have a moot court?

MR. KAPP: I had only one moot court. I probably should have had three or four moot courts. I now know that there has developed a group of professional Supreme Court advocates who regularly appear before the Court. It is now somewhat unusual for lawyers who don't

practice regularly before the Court to present cases there, certainly in significant cases. I look back on that, and reflect on that, I think that's probably right. I believe I lost Justice White in the course of the argument and Justice O'Connor was opposed from the outset. I'm not sure that I handled her that well. So it was a great learning experience for me. After it was over, and we lost on standing grounds, we did go back to the Internal Revenue Service and persuaded them to withdraw the tax exemption of those white flight academies and that, to this day, it is the case.

MR. NATHAN: On what ground did you persuade the IRS?

MR. KAPP: I think there was a certain amount of feeling within the Internal Revenue Service that these schools were discriminatory and ought not to qualify for tax exemption.

MR. NATHAN: And with respect to your argument in the Court of Appeals, do you recall who the panel was and do you recall what that experience was like?

MR. KAPP: Yes, it was a very good experience. I don't remember the makeup of the panel but I surely remember Justice Ginsburg who took a very active role in the case. She was very very helpful to me. She wrote the opinion. It was a good solid opinion.

MR. NATHAN: Was it a unanimous opinion?

MR. KAPP: It was a unanimous opinion.

MR. NATHAN: I want to ask you about balancing your personal life with your professional life at the time that you were a partner at this stage, 20 years after making partner at your firm. How did you balance those things?

MR. KAPP: I think it was really much easier to balance things in those days than it is now. I had four children -- that was a big part of my life. Then I had all of these outside interests that I wanted to pursue and the firm seemed very open to all of that. I worked very hard and I spent a lot of hours at the firm working on matters and there was a certain amount of family sacrifice in all of that. I think everybody who's practiced in a major law firm has experienced that and I certainly, I did too. But again the environment was much more conducive to that. I mean, I for many many years took a month off during the summer to travel with my family. Not every year but many, many years and that was never a major problem. I run into people now here and I talk to them and they feel great if they get a three day weekend. The pressure on these people to be productive is enormous. There were pressures in my day but they were much less than today.

MR. NATHAN: I just want to ask you about opportunities to do public service. I take it that you had some opportunities that they were presented over time.

MR. KAPP: Yes.

MR. NATHAN: What were they and what was your decision?

MR. KAPP: The first one was during the Carter administration. Bob Herzstein was the head of the trade component at the Department of Commerce and he asked me to come on in an assistant secretary role. I pursued that all along but the confirmation process moved at a glacial pace. By the time that they gave me the green light, there were about six months left in the Carter term. I thought it made no sense to go in at that point. I thought that if Carter were re-elected, and I knew that Bob planned to be staying on, I'd have a chance to join the administration. So I decided to wait. Of course Carter was defeated so that was the end of that. And then during the Clinton administration, the second half of it, I was recruited to be the general counsel of the Department of Agriculture. I pursued that all of the way up to the point where they had again given me the green light. And for reasons that are not entirely clear to me at this point, I decided not to go forward. I've always regretted that I didn't do at least one of those two things. But I didn't.

MR. NATHAN: Did you ever consider applying for a judgeship?

MR. KAPP: I did not.

MR. NATHAN: And apart from the ACLU, have you been active in the bar while you were a partner here at Hogan?

MR. KAPP: I was active in a number of public interest organizations. I served as chair of four different organizations, public interest organizations, at

different times. I was the chair of the local ACLU; I was the chair of the Washington Lawyers Committee for Civil Rights; I was co-chair of the National Lawyers' Committee for Civil Rights and I was the chair of what was then called the International Human Rights Law Group which became Global Rights. So I spent all, almost all of my free professional time in those particular areas. In addition, I took a sabbatical leave in 1978 and spent 6 months in Geneva, Switzerland working in the office of the International Commission of Jurists which is an international human rights organization.

MR. NATHAN: What was your experience like in Geneva?

MR. KAPP: I had a great experience in Geneva. I took, as I said, 6 months; I took my whole family with me. Three of my children came with me, one of my sons, my oldest child, was in his first year of college and did not come with me. My two youngest children, who were then, I guess about 9 and 7, we put in the French speaking public schools in Geneva. Neither of them spoke French but by the time we left they could carry on a simple conversation in French. And my eldest daughter, who did speak French, was placed in the College Calvin, which was equivalent to the third year of high school. I took French tutoring lessons along with my two younger kids; they did much better than I. As I said, I worked in the office of the International Commission of Jurists which had a full plate of interesting human

rights matters. I did a number of things around South African issues including working on the Stephen Biko inquest and some criminal justice issues. The head of the organization was a very well-known, very prominent human rights activist by the name of Niall McDermott. That was a great learning experience working along with him.

MR. NATHAN: And was that the beginning of your interest in international human rights affairs?

MR. KAPP: Actually my interest in international human rights grew out of the efforts of the National Lawyers' Committee to address the issue of apartheid in South Africa. The organization is basically a domestic civil rights organization but it did have a South Africa component. It funded lawyers in South Africa who represented members of the opposition to the apartheid government and also carried on protest movements in front of the South African embassy and elsewhere. I worked on the South Africa subcommittee of Lawyers Committee and became interested in the international human rights aspects of that effort. That was my first exposure to international human rights standards.

MR. NATHAN: I think that we'll stop at this point if that's okay. We'll resume here at our next session.

MR. KAPP: Okay.

ORAL HISTORY OF ROBERT KAPP

This is the third interview session of Robert Kapp on behalf of the Oral History Project of the U.S. Circuit Court of the District of Columbia. The interviewer is Irv Nathan. The interview is being conducted at Mr. Kapp's office at Hogan Lovells in Washington, DC on Monday, March 27, 2017 at 3:15 p.m.

MR. NATHAN: So Bob picking up today I wanted to go back to when you first arrived at Hogan & Hartson. How many women were there when you arrived in the firm in the late 50's?

MR. KAPP: When I arrived at the firm there were no women lawyers at all. There were women assistants and secretarial but there were no women lawyers.

MR. NATHAN: When was the first woman lawyer hired at Hogan?

MR. KAPP: The first woman lawyer was Sally Determan. Sally must have come I would say around 1965 or 66. She had been a graduate of GW Law School and she had interviewed at a number of firms around town and fortunately she chose Hogan, what was then Hogan & Hartson.

MR. NATHAN: And was she assigned to you?

MR. KAPP: She was assigned to the tax group. But she and I over the years worked on a number of problems --- a number of tax issues; we worked together for a number of different clients. She ultimately gravitated into an estate planning practice which I never did but there were still some aspects of the work that she was doing that overlapped with things that I was doing and we did work together

throughout our entire careers.

MR. NATHAN: She identified you as a superb mentor. How would you describe your role as a mentor, how did you see it and how did you carry it out?

MR. KAPP: I think I basically carried it out by giving as much responsibility as I could to the people that I worked with --- the younger people that I worked with. And, I think we also discussed in great detail the work that we were doing together. And there were three or four people over the years that I've felt that I had a significant mentoring relationship with. Sally, of course, and then Deborah Ashford, who was in the tax group, and Siobhan Rausch, who was also part of the tax group.

MR. NATHAN: Do you have the same view with respect to male associates?

MR. KAPP: I worked with a number of male associates over the years. I think Todd Miller, for example, is somebody who would feel that I had been helpful too and then later Howard Silver. But I'd have to say that the three women whom I mentioned represented the closest mentoring relationships that I had.

MR. NATHAN: Sally said that you constantly stressed integrity. How did you see integrity as part of the training for young associates?

MR. KAPP: I did feel that as lawyers we had a particular responsibility to do the right thing and I think that I tended to be pretty keenly aware of ethical responsibilities and I paid considerable attention to that.

MR. NATHAN: Did you have any problems with clients in regard to adhering to ethics; without mentioning any names, of course?

MR. KAPP: I did not.

MR. NATHAN: Ok. And when you arrived what was Hogan's view of pro bono?

MR. KAPP: When I arrived, I think the only lawyer in the firm who had done any pro bono work at all, at least that I was aware of, was Barrett Prettyman. But it was certainly not in any way a significant part of the culture. And I think I mentioned this before but when I wanted to take on some cases for the ACLU I was quite unsure as to how the firm would react. I made a specific request to take on these cases and, much to my pleasure, I received quite a bit of encouragement from firm management; people who probably would not have necessarily supported the causes that I was trying to advance.

MR. NATHAN: When did Hogan's view of pro bono change?

MR. KAPP: It changed in the very late '60s, or early '70s. There was, as I'm sure you know, quite a bit of social unrest at that time, and also quite a bit of competition among the law firms to attract the highest quality and most promising law students. Among the younger lawyers in the firm, and among many of the students who we were interviewing for positions, there was a desire to spend some time on socially relevant types of representation. And, in about 1970 or 1971, given the pressure coming up from the younger lawyers in the firm, the

executive committee of the firm established a study group or committee to decide what, if anything, the firm should do in this area and to make recommendations to the firm. And I was asked to chair that committee. There were four associates on the committee. By that time I was a partner in the firm. The four associates were Sally Determan, Tony Harrington, Peter Rousselot and Carl Taylor. We met over a period of several months. We interviewed people in public interest organizations, deans of law schools, government officials and others and came forward with a recommendation that we should establish a pro bono department in the firm which would be on the same footing as the existing practice groups in the firm. That it would be headed by a partner, that it would have a full-time associate assigned to it as well as short-term rotating associates and that other lawyers in the firm would work with the department on a case-by-case basis. We presented that recommendation to the executive committee of the firm. Interestingly enough, Nelson Hartson, the most senior partner in the firm, had discussed with me beforehand what our recommendation was going to be. And he indicated that he had a strong preference for an approach that was similar to that Covington & Burling had adopted. They assigned lawyers to the Legal Aid Society or the public defender's office on a full-time basis for a specified period of time. Nevertheless, the

executive committee decided to accept our recommendation. There is a letter that Nelson Hartson sent to Seymour Mintz which indicated that he would have much preferred the Covington & Burling approach but that he was willing to accept our recommendation. And the firm then did establish the pro bono department.

MR. NATHAN: What was it called?

MR. KAPP: It was called the Community Service Department. The first step that we took was to try to identify someone to become the partner in charge of the new department. We were strongly of the view that it should be someone who had a strong public interest profile.

MR. NATHAN: Did you give any thought to having someone who was already in the firm, a partner in the firm take over that department?

MR. KAPP: We did not. At that time we were looking for someone who was already actively involved in public interest representation. Several years before that I participated in a Ford Foundation funded project of the National Legal Aid and Defender Association to do an assessment of a neighborhood poverty law office that the Baltimore firm of Piper & Marbury had established. On that assessment team I met John Ferren. We worked together in Baltimore once a month for 18 months. So when the time came to seek a partner to head the department, I suggested John Ferren. Seymour Mintz sent him a letter asking him whether he would be willing to be interviewed

about the job. He subsequently told me that when he received the letter he was at Harvard running the clinical program there and was getting ready to throw the letter into the wastebasket when his wife said oh why don't you see these people and see what they have in mind. He came down to Washington and was quite impressed with the firm's plan; he took the job and moved to Washington and his career from then is pretty well known.

MR. NATHAN: Did you participate in trying to convince him to take this position?

MR. KAPP: I did.

MR. NATHAN: And what were the arguments that were most successful?

MR. KAPP: I think mostly that he had to be convinced that we were serious about this and that we were going to substantially expand the public interest work that the firm would undertake. He did become convinced and he did come.

MR. NATHAN: And was it staffed with associates who were already at the firm or did you recruit associates as well?

MR. KAPP: It was first staffed with Allen Snyder who had been a Supreme Court clerk. At that point the firm had not attracted many former clerks. Barrett Prettyman had clerked for three Supreme Court justices and Stuart Ross had also clerked. We used the promise he would be assigned to the Community Service Department as an inducement for Allen to join the firm.

MR. NATHAN: So Allen came in and worked in the Community Service department. He wasn't there before?

MR. KAPP: No. He came to the firm with that inducement.

MR. NATHAN: What were the early accomplishments of the Community Service department?

MR. KAPP: We took on a broad range of projects. John represented an effective social welfare organization – I can't even remember the name of it -- and became the general counsel for that organization. We took on several significant environmental matters and a number of civil rights cases.

MR. NATHAN: This obviously was just after a few years after the riots in '68 in the District. Was that part of the impetus for this? And you say community service, was the focus to serve the DC community in some way?

MR. KAPP: I don't think the focus was specifically to serve the DC community. And, in fact, that has never been the principal role. The emphasis was on service, I suppose, and not community. At the time of the '68 riots a number of people at the firm, and a number of lawyers all over town, were recruited to take on the representations of people who had been incarcerated after the riots.

MR. NATHAN: What was David Tatel's role in the Community Service department? Did he succeed John Ferren?

MR. KAPP: After Allen completed his term with the new department, John began looking for a deputy to work with him. David had been the head of the Chicago Lawyers Committee for Civil Rights, and Executive Director of the National Lawyers' Committee for Civil Rights. John and others in the firm encouraged David to join the firm; and later when John left to become Corporation Counsel for the District, David took on the role of the head of the Community Service Department. Later, after a period of government service, David returned to the firm to head its education practice.

MR. NATHAN: At Hogan & Hartson?

MR. KAPP: At Hogan. And then a group of other partners, all drawn from the firm, headed the department, one of whom was Sally Determan.

MR. NATHAN: In the same vein, let's talk a little bit about civil rights. How did you get involved originally in civil rights?

MR. KAPP: I was, like I suppose just about everybody else in America, quite affected by what was going on in the south in the early efforts of the civil rights movement. I had not paid particular attention to the civil rights struggle until the ferment started in the '60s, in the early '60s. The first thing that I remember happening was during the March on Washington, which is described in my *American Lawyer* profile. I was standing on the curb . . .

MR. NATHAN: This was in 1963?

MR. KAPP: 1963, I never had done anything like that before, but I stepped off the curb and joined the March. And that was kind of the beginning of it. And then I did a number of things on civil rights type matters. In the early 1970s, consideration was being given in Montgomery County to creating clusters of elementary schools in order to integrate the public schools. They were by reason of geography quite segregated. There was a ten person group or committee that was appointed to develop our community's position with respect to any clustering of elementary schools. I was appointed to that committee. I joined with two other people, one of whom was Rachel Kennedy, who was the mother of Harvard Law School professor Randall Kennedy and was a kindergarten teacher at Chevy Chase elementary school and an African American, and with a psychologist by the name of Joseph Slavin. We took the minority position that the clustering should go forward and that there ought to be busing from Chevy Chase Elementary School to Rosemary Hills School and back in turn from Rosemary Hills School to our school in Chevy Chase. We issued a minority report. The majority report in the community was to not proceed with the clustering. And I testified before the Montgomery County School Board in favor of the clustering plan and the Board did adopt the cluster of the Chevy Chase Elementary School and Rosemary Hills; which cluster still exists and I think has been quite

successful. At some point shortly after that, David Tatel became aware of the work that I had done and David, who had a long time involvement in the Lawyers Committee for Civil Rights urged me to join the board of the Committee. I was delighted to do that and I did do that.

MR. NATHAN: Was that the national board or the local board?

MR. KAPP: That was the national board. Before that time I had been on the local board which I had chaired. I might mention the background of the Committee. The Lawyers' Committee was established in 1963 at the time of an effort to desegregate the schools in the South and particularly the University of Alabama. President Kennedy called together and invited to meet at the White House 250 prominent lawyers, bar leaders and what have you to urge the lawyers to become involved in and intervene in various ways in the civil rights effort. I was not among those invited. Following the conference at the White House a group of the lawyers who had been invited to attend the meeting established what became the Lawyers Committee for Civil Rights and began working on providing representation to civil rights workers in Mississippi. So that was a big commitment of mine for a long time.

MR. NATHAN: Who were other Washington lawyers who were on the National Lawyers' Committee around that time?

MR. KAPP: There was at that time John Douglas from Covington & Burling, Steve Pollak, from Shea & Gardner, John Nolan from Steptoe & Johnson, David Tatel and Peter Connell, who was the general counsel of Aetna. Those were the principal people that I knew at that point.

MR. NATHAN: And then how did you get involved with the ACLU?

MR. KAPP: I became involved in the early '60s.

MR. NATHAN: Before you joined the National board of the lawyer's committee?

MR. KAPP: Yes. The ACLU was very early. It was in the early '60s.

MR. NATHAN: Even before you stepped off the curb?

MR. KAPP: It was about the time that I stepped off the curb. I had taken on a number of cases for the ACLU. I think we talked about this last time around and then I went on the board of the local ACLU which I eventually chaired and later went on the national board of the ACLU. I still feel very committed to the ACLU.

MR. NATHAN: At some point you got involved in apartheid in South Africa and in observing elections. How did that come about?

MR. KAPP: That was a direct result of my involvement in the National Lawyers' Committee. The National Lawyers' Committee is basically a domestic civil rights organization with programs on voting rights, education, housing, employment discrimination and the like but they felt an affinity to what was going on in South Africa --- apartheid in South Africa. They established a committee of the board to focus on

South Africa related matters. What we did principally was to fund lawyers in South Africa who were representing people who were protesting against apartheid in one form or another. And then, during that same period, a series of protests developed in Washington and, of course, all over the United States. But the one that I was aware of occurred in Washington. There were a number of demonstrations in front of the South African Embassy and the Lawyers' Committee participated in that effort. And after that, the first break in the apartheid regime in Southern Africa occurred in Namibia. Namibia had been under German mandate. In fact, it was once known as German Southwest Africa. Thereafter, South Africa was given the mandate to govern Namibia. After that -- I think around 1966 -- the international community became concerned and the UN mandated that South Africa leave Namibia and work commenced toward Namibian independence. That went on for quite a long time. By 1989, the transition to Namibian independence had accelerated under United Nations oversight. And as part of the transition, elections were held in Namibia and I went with a group of fellow members of the Lawyers' Committee on an election assessment project in Namibia. In 1989, we went to Namibia on three different occasions for two week assessment periods.

MR. NATHAN: These were in advance of the elections?

MR. KAPP: These were in advance of the election. We were trying to assess whether the environment was congenial to the conduct of free and fair elections. We looked at the electoral laws in Namibia. There was a great deal of intimidation of Namibians who were to participate in the electoral process. We made comments on the electoral laws and the electoral process. Ultimately, they did move to independence toward the end of 1989 and they held their election and they've been independent ever since.

MR. NATHAN: Were you there for the elections?

MR. KAPP: I was not there for the election.

MR. NATHAN: Were there international observers at the election?

MR. KAPP: There were international observers other than the Lawyers' Committee group. I think the National Democratic Institute was there and National Republican Institute and a few others. There were nowhere near the number of international observers as in the ultimate South African elections. But there were others.

MR. NATHAN: And then, I guess the elections in South Africa were in 1994?

MR. KAPP: Yes.

MR. NATHAN: And did you go in advance of that or did you attend simply for the election?

MR. KAPP: I went as an election observer at the time of the election. I was there for two weeks. I went again with a group of people from Lawyers'

Committee. We first spent three days in a training in Johannesburg and then were sent out to various different locations. I was sent out to an area called Bophuthatswana and was there for 10 or 11 days, first observing the electoral conditions, talking to people in the major political parties, journalists, churches, the unions, about the conditions; and then ultimately on the day of the election to observe the voting.

MR. NATHAN: What did you observe? What was your impression?

MR. KAPP: I'd have to say it was, for me, the most moving experience of my lifetime. I remember coming to the polling place on the day of the election itself and there were these enormous lines of people patiently waiting to vote. For black South Africans who had been treated so brutally over the years I observed an incredible amount of forgiveness and a great deal of enthusiasm about being able to participate in the electoral process for the first time. These people were entirely inexperienced with voting. I can remember one time we went into a polling place where the voting booths were to have been set up so that the voters could stand behind them to preserve the privacy of the ballot. We saw that all the booths were setup in the wrong direction so that the ballot could be seen by everybody in the room. So we showed them how they should turn around the little booth, which they did and went forward. It was the enthusiasm for participation in

the voting process that was in my mind incredible.

MR. NATHAN: You described it as a triumph for the human spirit. What did you mean by that?

MR. KAPP: I think I really had in mind the forgiveness component. The combination of the forgiveness of the former government and the enthusiasm which they demonstrated in participation in the electoral process. There were lines of 5, 6, 7 hours; these people waited and waited peacefully and patiently.

MR. NATHAN: Did you see any intimidation or any indication of problems?

MR. KAPP: No. Not at that time. There was no evidence of intimidation on the election day itself, but there were many complications along the way. This was true in Namibia as well. Many of the black South Africans were farm laborers; they worked on farms which were white-owned. There was a lot of intimidation. The owners intimidated these people; they tried to keep observers out; many of them were armed at various times. It was very difficult. Then there was just a great deal of violence in South Africa on the days leading up to of the election. But by the time the voting actually started things really had calmed down.

MR. NATHAN: Was it a one day vote?

MR. KAPP: It was a one day vote.

MR. NATHAN: And that day you didn't see any violence or threats?

MR. KAPP: There wasn't, no.

MR. NATHAN: When you say they were intimidating, the white owners of the farms, were they seeking to preclude the voters from voting or were they trying to get them to vote for a white candidate?

MR. KAPP: There was a combination of things. There was some effort to preclude them from voting; and in other cases they were attempting to persuade the employees on their farms to vote in a particular way.

MR. NATHAN: I want to turn the same time period to the Bork nomination in the US to the Supreme Court. Did you play a role in the opposition to Judge Bork being confirmed for a Supreme Court nomination?

MR. KAPP: I did play a modest role.

MR. NATHAN: What was your role?

MR. KAPP: There were a lot of other people who had roles. There was a pretty strong feeling, particularly in the civil rights community and among many of the progressive organizations, that Judge Bork's judicial views were outside of the mainstream. He had said at one point that *Brown vs. Board of Education* was wrongly decided, that he was opposed to affirmative action, that he was opposed to anti-discrimination laws and so forth.

MR. NATHAN: Antidiscrimination laws?

MR. KAPP: Pardon me

MR. NATHAN: He was opposed to antidiscrimination laws?

MR. KAPP: Opposed to antidiscrimination laws. So there was an effort among what I'd call the liberal community to oppose his nomination. It was an important nomination since he was to succeed Justice Lewis Powell who had been very much a swing vote on the Court. And if Judge Bork would have been confirmed it would have moved the court in an extremely conservative direction. So there were a number of organizations -- a coalition of organizations -- that included the Alliance for Justice, the NAACP Legal Defense Fund, the Lawyers' Committee, the ACLU, which had come together to oppose the nomination. And I was asked, along with four other lawyers -- former Judge Marvin Frankel, David Isbell, Former President of the D.C. Bar, Jay Topkis, a New York constitutional lawyer, and the head of the City Bar of New York -- to try to mobilize prominent lawyers in major law firms to join in opposing the nomination. We prepared a letter opposing the nomination and then sought lawyers to subscribe to the letter to oppose the nomination. And we did obtain a great deal of support; and presented that to the Senate Judiciary Committee. As we all know, Judge Bork was denied confirmation. The administration then turned to Justice Anthony Kennedy who was confirmed and has played an extremely significant role on the Court. I've always had somewhat ambivalent feelings about all of this. I'm clear in my own mind that if Judge Bork had been confirmed the

direction in which the Supreme Court would have gone would have been undesirable. On the other hand, I'm quite aware of the fact that all of the present controversy over Supreme Court nominees and efforts to stop nominations on both sides was provoked in many ways by the Bork nomination process. And I've wondered at many times whether this was a desirable result. On the other hand, on balance, because I think that Judge Bork would have been such a disaster for the Court and for the country, I've come to terms with it. But not without some reservations.

MR. NATHAN: Do you think that there were tactics or approaches used in the opposition to the Bork nomination that were inadvisable?

MR. KAPP: No, not particularly. It was the intensity of the attack.

MR. NATHAN: Have you see Judge Robertson's recent op-ed piece on this?

MR. KAPP: I have seen his and for our readers sake you may want to describe it.

MR. NATHAN: He's essentially calling for a truce here and suggesting that that kind of opposition not be repeated with respect to the current nomination. How do you come out on this?

MR. KAPP: I must say I, in some respects tend to agree, with Judge Robertson, as an abstract proposition. It would be much better if these nominations were handled in a different way. But, on the other hand, Judge Robertson is prepared to now call a truce here without the other side laying down their arms. This is a two-way street. Elections have

consequences. People who are highly qualified in most cases should be confirmed.

MR. NATHAN: But it's a curious time to call a truce following what happened to the chief judge of the DC Circuit Merrick Garland.

MR. KAPP: I agree entirely with that.

MR. NATHAN: In 2012 you received the lifetime achievement award from the *American Lawyer* and you were in some pretty heavy company. I take it that was a great honor for you?

MR. KAPP: I was in some really distinguished company. Senator George Mitchell, Judge Margaret Marshall, of the Massachusetts Supreme Court and several other distinguished people. I felt quite honored and privileged.

MR. NATHAN: Did you make a speech at that time?

MR. KAPP: I did.

MR. NATHAN: What was the essence of your remarks?

MR. KAPP: The essence of my remarks, recognizing that I received this award by reason of my efforts to mobilize lawyers for pro bono work and for professional responsibility and for both the work I had done in establishing the firm's Community Service Department and subsequently in establishing the International Senior Lawyers Project was basically a call for greater professional responsibility and greater pro bono participation on the part of lawyers.

MR. NATHAN: You said at the time that your highest professional achievement was co-founding and developing the International Senior Lawyers Project. How did that project come about?

MR. KAPP: I still feel that way. I was getting ready to retire from the practice of law; I was 66 or 67 years old and I was beginning to think about what it was I would like to do on my retirement. I had lunch one day at Dean and DeLuca in Washington with Tony Essaye who is my age and who was getting ready to retire from his law firm. And we started talking about what it is we might do on our retirement. He and I had worked together on several projects for the Democratic National Committee -- legal projects for the Democratic National Committee -- and we knew one another socially. We were friendly.

MR. NATHAN: When was that work with the Democratic National Committee?

MR. KAPP: It would have been at about the time of the Clinton administration.

MR. NATHAN: So back in the early ‘90s.

MR. KAPP: The early ‘90s. In any event, we started talking and we developed the notion of trying to establish a not-for-profit organization which would send lawyers overseas on a pro bono basis to do human rights and economic development, primarily in developing countries. We started out by pulling together a group of lawyers in Washington -- a working group of lawyers in Washington -- who were interested in those particular matters and had pretty strong international interests.

Tony had been the Deputy General Counsel of the Peace Corps and his practice had been primarily in the international commercial area and so he was very interested in the economic development piece of this. I had been involved in some human rights activity and that was my particular interest. So we began to meet with a working group of seven or eight lawyers and began to develop this idea. Ultimately, we established a not-for-profit organization which we called the International Senior Lawyers Project to mobilize volunteer lawyers to work on human rights and economic development overseas. Our model was Doctors Without Borders.

MR. NATHAN: Were the lawyers from a lot of different countries or mostly U.S. lawyers?

MR. KAPP: When we started out it was almost entirely U.S. lawyers. The originating group consisted entirely of Washington lawyers who Tony and I knew. But when we established our Board we added some lawyers from New York City, lawyers from Cleveland and Boston, one from Poland and another lawyer from South Africa. And then, about five years into the organization, we organized a group of continental European lawyers to establish an affiliated organization. Subsequently, we merged with a group called the International Lawyers Project, a United Kingdom organization. They still exist today as an affiliated organization.

MR. NATHAN: And was it a problem for American lawyers to handle problems in these developing countries?

MR. KAPP: Many people have asked me that and many people have expected that the answer would be yes it's a problem; the legal systems are different, but the truth of the matter is that when we work in a particular country on a particular project we ordinarily associate with a lawyer from that particular country. Then, many of the projects have involved negotiating transactions. These are not affected by differences in the law. The laws are learnable and so it never really has turned out to be much of a problem.

MR. NATHAN: And where did the funding come from for this?

MR. KAPP: The funding has come from three different sources. A group of law firms, a number of private foundations -- the largest support has been from the Open Society Foundation -- and from individual lawyers. The way things started out on the funding front was quite remarkable. Early on the idea of the organization was a gleam in Tony's and my eyes. Someone gave us an introduction to the Open Society Foundation in New York and we were invited to go up there and meet with them. We walked into their building in New York and there was this big sign – "Welcome International Senior Lawyers Project" -- which as I have said was only a gleam in our eyes. We met with them and they began to fund us. They have since been our principal

funder; our largest single funder.

MR. NATHAN: And what would you say are the major accomplishments of the International Senior Lawyers Project?

MR. KAPP: Well, one major accomplishment is our commercial law training program. We have trained over 1,000 young black lawyers in South Africa in commercial law matters in an effort to mainstream them into the profession. Most of them have come from third tier law schools and continue to find their practice limited to criminal matters, torts and a number of matters which from an economic standpoint are not particularly attractive. We've done a great deal of this training in South Africa and we've expanded the program into other countries in southern Africa including Zimbabwe, Botswana, and Gambia. That was one of our earliest programs and continues today, It has been terrific. Another major accomplishment has been the work that we've done in negotiating natural resource concession agreements between African countries and major multi-national corporations. The countries in southern Africa are rich in natural resources and they continually find themselves having to face up to the massive legal resources of large multi-national corporations. They were just outplayed from a legal standpoint. In recent years, we have negotiated a number of these transactions. I think we've done a lot toward leveling the playing field and to ensure that the countries get a

fair shake economically. That finds its way to the benefit of the people of these countries. There is then the case of an Angolan journalist who had uncovered and publicized corruption in the Angolan government. The government then turned around and tried to prosecute him criminally. We found lawyers in Portugal to represent him. They turned the prosecution around; the case was dismissed. Our program of promoting press freedom, the protection of journalists and access to information has been particularly effective and is widely recognized as a premier international media law organization. Overall, we have now worked in 60 or 70 countries.

MR. NATHAN: Have you worked on some matters personally for the project?

MR. KAPP: With a few minor exceptions, I have not.

MR. NATHAN: That's surprising.

MR. KAPP: For the most part, neither Tony nor I worked, to any extent on any of the organization's projects. Our work in building the organization and administering it was pretty much a full time job for just about 15 years. There have been constant challenges in developing projects, raising money, recruiting volunteers and the like. We pretty much confined ourselves to that. From an oversight standpoint, I would note that we have a staff of 12, plus several interns, with offices in New York and London.

MR. NATHAN: You were doing some work with Mary Robinson.

MR. KAPP I did. That was a separate project.

MR. NATHAN: What was that?

Mr. KAPP Mary Robinson had been the President of Ireland and then the UN High Commissioner for Human Rights. When she left the UN she established an organization in the United States to carry forward a human rights program worldwide. I was introduced to her by my partner, Joe Hassett. She needed someone to help her organize and setup the organization. I did that for her and we became friendly in the course of that. I was interested in the program she was carrying forward. I then worked with her part-time for 6 or 7 years. This included trips to Tanzania, Mali and other parts of the world.

MR. NATHAN: While working full-time on the International Senior Lawyers Project?

MR. KAPP Yes, exactly.

MR. NATHAN: Well as we wrap up I wonder if you have some thoughts on major changes in the practice of law for close to 60 years that you have been practicing in the District of Columbia

MR. KAPP Yes it so happens that one of the partners at Hogan Lovells, Bob Duncan, teaches a course at the University of Virginia which is called Big Law. He covers various issues confronted by major law firms. He invited me down there last September to talk about what had happened over the course of my career in terms of changes in the

profession.

MR. NATHAN: So you just happened to have a 60 minute lecture on this topic.

MR. KAPP Not quite, but I did talk about what had happened in my lifetime, focusing mainly on Hogan. I came there as the 43rd lawyer; there were no women lawyers at the time; and no lawyers of color. There was very limited involvement in pro bono work. The firm now has 2400 lawyers. They are hiring more women these days than men. There are few lawyers of color but some progress has been made in this area. This is still a major issue for the firm and more generally for the profession. Overall, I think it is a much more difficult environment than it was when I joined the firm.

MR. NATHAN: In what way?

MR. KAPP I'm not saying the practice was entirely relaxed but there was not the intensity, not the continual demand on billing of hours and collections as today. There is no security even for people promoted to partnership anymore.

MR. NATHAN: Basically what accounts for the difference?

MR. KAPP I think that what happened was that the investment banks, which were in many cases the clients of these law firms, were paying enormous amounts of compensation. The lawyers working with those same people saw that there was an opportunity to do much better financially. That was one factor. There are probably a number of

other factors but that certainly was a major one that led to the kind of competition that goes on within the firms. The practice in these firms is probably much more interesting, and much more challenging, than it was when I was at Hogan with 42 or 43 lawyers. Much of it is pretty exciting work. International work -- you fly to London --; you have women in the profession which is a great improvement; and the effort to diversify racially is a great thing. These firms when I started were made up of all white males and tended to be very conservative. I think there is a greater sense of professional responsibility but it is harder to carry it out because of the incredible time demands.

MR. NATHAN: You want to comment on the difference in technology over the last 60 years in the practice world?

MR. KAPP Well I must say being a bit of a dinosaur my comments are probably not particularly helpful. But when I started, if you wanted copies of your work the only way was through the use of carbon paper. One great difference is in the information that is available through the internet. When I would go into the library here at the firm everyone would be sitting there reading their books. Now you go into the library, to the extent it exists at all, there is nobody there.

MR. NATHAN: Everybody is on the computer

MR. KAPP They are all working on their computers. It used to be that everyone had a personal secretary. Now all the lawyers do their own word

processing. So the assistants cover many people. It's different, it's not necessarily better. It has its good features but I think some weaknesses in terms of the life that one has to lead.

MR. NATHAN: And finally what advice would you give to lawyers who are starting out today? Would you encourage bright college graduates to go into law?

MR. KAPP I think if you look at the alternatives the law is still a pretty good way to go. It opens up multiple possible avenues. So I wouldn't necessarily discourage people. I think it is a much harder road to hoe. I would continue to promote the idea of lawyers taking professional responsibility seriously; doing pro bono work; doing public service. I think all those opportunities are still available to lawyers. It's harder to do.

MR. NATHAN: Okay. Is there anything that I didn't ask that I should ask?

MR. KAPP I don't. Let me just see here.

MR. NATHAN: Any additional thoughts?

MR. KAPP No, I think we have pretty well covered it and I thank you for that.

MR. NATHAN: Thank you very much for allowing me to interview you.

MR. KAPP You're welcome.

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# R E S U M É

June, 2017

| | |
|---|---|
| Name: | **Robert H. Kapp** |
| Business Address: | Columbia Square<br>555 Thirteenth Street NW<br>Washington, DC 20004<br>202/637-8611 |
| Born: | March 9, 1934<br>Chicago, Illinois |

Education:

Legal

| | |
|---|---|
| School: | University of Michigan Law School. S.J.D., with distinction, 1958 |
| Organizations: | Associate Editor, Michigan Law Review |

Undergraduate

| | |
|---|---|
| School: | Wharton School of Finance & Commerce, University of Pennsylvania. B.S., Economics, 1955 |

Legal Experience: Trial Attorney, Tax Division, United States Department of Justice (Attorney General's Honor Program), September, 1958 - March, 1961.

Partner, Hogan & Hartson, Washington, DC (joined firm March, 1961; admitted to partnership December, 1965; presently Counsel; has served on Executive Committee of firm).

Practice Area: Principally federal taxation with some emphasis on tax litigation matters. Practice in later years involved heavy concentration on representation of universities, medical centers, research institutes, charitable organizations and other non-profit organizations in tax and other matters. Experience in international commercial arbitration; mediation.

Managed Firm's representation in government's valuation case as Special Counsel in Rail Reorganization Act Cases.

Teaching Experience: Associate Professorial Lecturer in Law (Taxation), The National Law Center, George Washington University, 1970-1975

Other Activities:

Co-Founder and Co-President, International Senior Lawyers' Project (an international pro bono legal service) (2000-2016)

Senior Advisor, Ethical Globalization Initiative (2003-2009)

National Co-Chair, Lawyers' Committee for Civil Rights Under Law (1983-1985); Board of Trustees (1976-present); Member, Southern Africa Project Subcommittee (1978-1994)

Co-Chair, Washington Lawyers' Committee for Civil Rights and Urban Affairs (1979-1981); Board of Trustees (1973-1995)

Chair, American Civil Liberties Union of the National Capital Area (1990-1992); Board of Trustees (1982-1994); National Board (1993-1995)

Chair, International Human Rights Law Group renamed Global Rights (1986-1989); Board of Trustees (1979-2010)

International Election Observer Missions: Namibia (1989); South Africa (1994)

Board of Directors, Emergency Fund For South African Families (1987-1990)

Board of Directors, Higher Achievement Program (an inner-city tutoring program) (1990-1994)

Advisory Board, International Legal Studies Program, Washington College of Law, American University (1994-2002)

Visitor's Committee, University of Michigan Law School

Mediator, United States District Court and United States Court of Appeals (D.C. Circuit) Mediation Programs

Legal Officer, International Commission of Jurists, Geneva, Switzerland (while on sabbatical leave, Feb. 1-July 31, 1978)

Consultant, National Legal Aid and Defender Association, regarding study of private law firm poverty-area neighborhood law office (Piper & Marbury of Baltimore, Maryland) pursuant to Ford Foundation grant. The results of the study are published in Ashman, The New Private Practice (NLADA, 1973).

Member, Area I Planning Committee, Montgomery County Public Schools (1975-1976)

| | | |
|---|---|---|
| | District of Columbia Bar: | Gender Bias Study Committee;<br>Family Law Task Force |

Alan Barth Service Award (ACLU, 1996)
Wiley J. Branton Award (Washington Lawyers' Committee, 1992)
C. Anthony Friedrich Memorial Award (Law Group, 1999)

The American Lawyer 2012 Lifetime Achievement Award

| | |
|---|---|
| Admitted to practice: | Illinois, 1958<br>District of Columbia, 1961 |

# Resume of Irvin B. Nathan

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## EMPLOYMENT

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

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

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

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

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

*Litigation Partner , Arnold & Porter , Washington , D.C , (1981-1993)* (handled wide variety of complex civil, criminal and administrative litigation and congressional representations, including civil RICO, securities, antitrust, and consumer protection matters. Successfully defended national law firm partner in multi-month criminal trial in federal court; represented City of New York in

civil RICO suit against tax defrauders; and served as special minority counsel to U.S. Senate Intelligence Committee in investigation of CIA Director.)

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

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

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

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

**BAR ACTIVITIES**

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

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

Chairman, Ethics Committee of the D.C. Bar (1999-2001) (Wrote published legal opinions interpreting D.C. Rules of Professional Conduct in response to inquiries from the Bar )

Fellow American College of Trial Lawyers (1997-present)

Member, American Law Institute (1994-present)

Member, American Bar Foundation (1995-present)

Member, D.C. Bar Committee on Civility in Litigation (1993-1996)
Chairman, Nominating Committee, D.C. Bar, 1990

Chairman, Ad Hoc ABA Committee on Independent Counsel Statute, (1985-1987)

Chairman, Committee on White Collar Crime, Criminal Justice Section, American Bar Association, (1982-1984)

**EDUCATION**

Columbia Law School, (1964-1967)
J.D., *magna cum laude*
Board of Editors, Columbia Law Review
Jerome Michael Trial Advocacy Award
Harlan Fiske Stone Scholar, (1966, 1967)

Johns Hopkins University, (1960-1964)
B.A. *Phi Beta Kappa.*

**CIVIC ACTIVITIES**

President, Council for Court Excellence (2015-present); Member, Board of Directors (2009-present)

President, Frederick B. Abramson Foundation, (2004-2006); Board of Directors (2001-2006); 2015-present)

UDC Law School Foundation Board, (2008-2010)
Member, Board of Anti-Defamation League of D.C., (2009-2010)

Past Chair, Board of Trustees, National Capital Region, American Jewish Congress

**HONORS**

Woodrow Wilson Award for Distinguished Government Service, Johns Hopkins University Alumni Association, 2013
Visionaries in the Law Award, National Law Journal, 2009
Best Lawyers in America (1989-2009) (each year)

**TEACHING EXPERIENCE**

Visiting Professor, Hebrew University, Jerusalem, Israel (Spring Semester, 2015)

Adjunct Professor, Georgetown University Law Center, (1995, 1996, 2009, 2010, 2014)

Adjunct Professor, University of San Diego Law School, (1990-1991)
Lecturer, Washington College of Law, American University Summer Institute on Law and Government (June 2010)

**SELECTED PUBLICATIONS**

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

Prosecuting a Civil Rico Case, Chapter, RICO: *Civil and Criminal, Law and Strategy*, edited by Judge Jed Rakoff and Howard Goldstein, Law Journal Press (1989);

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

Corruption Trials: The Pitfalls, *The National Law Journal*, 4/13/81;

Confronting the Evidence of Corruption, *The National Law Journal*, 4/20/81;

Proposed Amendments for RICO: Making a Criminal Law More Civil, *The National Law Journal*, 8/31/81;

Civil RICO: A Primer on the Emerging Use and Abuse of an Elastic Treble Damage Remedy, *The Practical Lawyer*, Fall 1983;

Doubling the Treble Damage Remedy, 52 *Antitrust Law Journal* 327 (1983);

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Civil RICO, (Part I), *The Practical Lawyer*, 12/1/83;

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RICO and the Search for Triple Damages, *International Financial Law*, July, 1985;

The Bank Secrecy Act, *Review of Financial Services Regulation,* 4/9/86;

Practical Considerations Concerning Internal Corporate Investigations, *Georgetown University Law Center Federal Enforcement*, 1987;

Strengthening the Independent Counsel Law Requires Judicial Review of the Attorney General's Decision (with David P. Gersch), 25 Am. Crim. L. Rev. 199 (Fall 1987);

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Trial by Ambush, *The New York Times*, Op-Ed, 2/6/95;

Coordinated Criminal Investigations Between the United States and Foreign Governments and Their Implications for American Constitutional Rights (with Christopher D. Man), 42 Va. J. Int'l L. 821 (Spring 2002);

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