Oral History of John C. Cruden, Esq.

This interview was conducted on behalf of the Oral History Project of The Historical Society the District of Columbia Circuit. The interviewer is Tracy H. Scarrow, and the interviewee is John C. Cruden. The interview took place at Beveridge & Diamond, 1900 N St NW, Suite 100, Washington, DC 20036 on February 25, 2020. This is the second interview.

MS. SCARROW: All right, we're here on February 25, this is the second interview with John Cruden. And just to back up for a second, in our first interview we generally covered your childhood, West Point, your marriage and then your initial military service in Germany and Vietnam. Is there anything that we didn't cover that we should touch on or should we move forward?

MR CRUDEN: I did not tell you about my departure from Vietnam. Remember, I was with the Special Forces then, a group of truly brave patriots, but a wild, untamed bunch. After going through the necessary clearance process, which meant turning over my accumulated weapons and ammunition to authorities, I was driven by several of my friends in an open-air jeep through the middle of Saigon. Somehow, they managed to collect some fireworks, so they drove me right onto the runway at the Tan Son Nhut airfield. With the military plane waiting, they set off the fireworks, put me on the plane, and then saluted me as I left. The other plane passengers, held up for my arrival, were not as amused as my friends were with the farewell.

MS. SCARROW: Great. So, you then went directly from Vietnam to law school – Santa Clara University School of Law – and can you talk a little bit about what that transition was like, it must have been quite the culture shock.

MR. CRUDEN: Although each of the schools I applied to ultimately accepted me, Santa Clara Law School, which had been recommended to me by a JAG lawyer in Saigon, responded first, which was critical for me as the Army personnel office was impatiently waiting. I am now eternally indebted to Santa Clara Law because their quick acceptance was quite significant to me. Had they not accepted me when they did, the Army in its wisdom was primed to give me another assignment which would have prevented me from going to law school. I am now a donor to the school and an adjunct professor.

MS. SCARROW: What happened after you returned from Vietnam?

MR. CRUDEN: My wife found to her dismay that I was malnourished from extended periods of dysentery, had bad growths on my feet, but was completely delighted to be on home ground where no one was shooting at me. After a brief vacation along Lake Michigan with my wife, we drove in a new yellow VW beetle she had proudly purchased to what is now the Silicon Valley of Northern California. We found a small apartment, and then waves of internal conflict spread over me as I realized I no longer needed to carry a M16 everywhere I went, did not need to pat down my bed at night to make sure no unwanted creatures were there, did not have to walk gingerly to avoid mines and traps, could sit down without triggering grenades and drink water from a faucet without facing sickness. In short, my transition to a world of peace and education took some time. Yet, I

was blessed by a supportive group of new friends, a beautiful campus, and professors genuinely interested in my well-being.

MS. SCARROW: Can you explain how that worked? Were you on leave from the military or how does that work when you go to school when you are in the military?

MR. CRUDEN: At that time, the only available Army program was called "Excess Leave," which allowed me to go on a leave of absence from the Army while I was in school and then return to Army jurisdiction during vacation periods. Now there is a congressionally enacted program that pays all expenses, but that was not available to me when I went to law school.

MS. SCARROW: Did the military pay for you to go to law school?

MR. CRUDEN: The military did not pay any of my law school expenses or give me any expenses while I was in law school, but they did pay my salary during the summers while I worked at Fort Ord, on the Monterey peninsula. Fortunately, Santa Clara Law School gave me a full scholarship for all three years. That is another reason I am fond of, and a donor now to, my law school.

MS. SCARROW: And can you talk a little about your law school experience generally? Did you have favorite classes, professors, things that stick out in your mind?

MR. CRUDEN: Once I adjusted to not being in a war zone and not having to clean a weapon each evening before I went to bed, I found the entire law school experience exhilarating. New and bright friends, committed professors, an area of California that was rising dramatically and attracting young, energetic computer geniuses, and a whole new galaxy of legal issues

which I thoroughly enjoyed studying. I'm still very close to a number of my classmates. Just this year I returned to Silicon Valley to teach an intensive 3-day weekend course on environmental enforcement, and then I spent Sunday with my classmates living in Santa Cruz. Because I was doing well academically, the law school gave me a number of remarkably interesting opportunities. I served as a teaching assistant to Professor (Father) Paul Goda, rose to leadership in the Law Review, was a finalist in a state moot court competition, became a part time Public Defender when future Chief Justice Rose Bird headed that office, and then clerked most of my final year on the California Supreme Court for Justice Stanley Mosk.

MS. SCARROW: Can you tell us a little more about that clerkship experience, what type of cases you worked on, and what you learned from Justice Mosk?

MR. CRUDEN: I'm a great fan of Justice Mosk who became a lifetime mentor and friend. He was Attorney General of California and then was selected for the Supreme Court by Governor Edmund Brown. A year before my time with him his clerk was Jerry Brown, Governor Brown's son, who later went on to become California's governor.

Mosk was a great Supreme Court justice at a time when the California Supreme Court was at its zenith, with such powerhouse justices as Chief Justices Donald Wright, Roger Traynor, and Matthew Tobriner. Justice Mosk ultimately became the longest serving justice on the court, serving from 1964 until 2001. When I wrote speeches for him, he would often start by saying that "California courts are to courts as UCLA is to

basketball." That always elicited a good response in a California audience, as this was the John Wooden era of UCLA basketball when UCLA won ten NCAA titles, including seven straight titles from 1967 until 1973.

I learned a lot from him about writing, being fair, and taking care of others. He held my first daughter as a baby, and later when I was at the Department of Justice and litigating a TRO in San Francisco, he became a temporary babysitter for my then-high school aged daughter who stayed with him in his chambers while I was litigating a case. When I returned, she was sitting at his desk, and she told me that she had gone to lunch with the judge and the famed *San Francisco Chronicle* journalist Herb Caen. She was thrilled.

MS. SCARROW: And you mentioned that you also worked for Rose Bird, can you talk a little more about that?

MR. CRUDEN: Rose Bird co-led an amazing class/internship, done jointly with Stanford Law School, known as the "Public Defender Course." We met weekly in Stanford for classes, led by Professor Anthony Amsterdam and Rose Bird. The course included videotaped practice sessions, mock trial exercises, and lectures by Stanford law professors on trial practice and criminal justice. Beyond the classwork, we were all actively involved as interning in public defender offices. Rose Bird was then the leader of one of the state's largest Public Defender Offices in Santa Clara, and she became a mentor of mine as she supervised me when I was working in her office.

She was particularly supportive of my family when my daughter was born, and she came to my graduation with a baby gift. Later, Governor Brown appointed her to be Secretary of Agriculture and subsequently to be Chief Justice of the California Supreme Court. She was one of the very first women appointed as a state Chief Justice.

MS. SCARROW: So, it sounds like both of these experiences had big influences on your career and serving as mentors.

MR. CRUDEN: Without question great attorneys like Father Paul Goda, Justice Stanley Mosk, and Chief Justice Rose Bird had a significant impact on my life and guided me in my opening moments as a lawyer.

MS. SCARROW: And I understand you were involved in a couple of other activities while you were in law school. You were in the finals of the state moot court competition?

MR. CRUDEN: Yes. Santa Clara had a well-known moot court program. It was highly competitive inside of the law school. Our state team, in which I was co-lead, did quite well in the state court competition.

MS. SCARROW: And you also participated in the law review.

MR. CRUDEN: Yes. I was the managing editor in our Law Review, and the law review members became some of my best friends. We did a highly regarded review of mental health programs in the state. And they were good enough to publish my first ever law review article.

MS. SCARROW: Do you recall the name of the article that you published?

MR. CRUDEN: I authored an article on the Federal Medical Care Recovery Act.[1] As I mentioned, I worked for the military JAG office in the summer, doing civil litigation work, and running an office responsible for obtaining reimbursement for the Army under the Federal Medical Care Recovery Act. That experience gave me the information I needed to write the law review article, which was then distributed to every Army legal office in the Nation.

MS. SCARROW: You mentioned that during the summers you would revert back to active duty, can you explain sort of how that worked and what you did during those summers?

MR. CRUDEN: During the summer I would return to active duty, put my uniform on, and become Captain Cruden again. I spent each summer in the Office of the Judge Advocate at Fort Ord, California, near Monterey, and did civil cost recovery work. That work became valuable to me in the future, as I worked with countless Assistant U.S. Attorneys in California.

MS. SCARROW: And you did that both for the summers in between your first and second year of law school, and between your second and third year?

MR. CRUDEN: I did that each summer while I was in law school.

MS. SCARROW: And I understand that you and your wife had a little side business going on while you were in law school, so that you could make a little money?

---

[1] John C. Cruden, *Government Recovery: Federal Medical Care Recovery Act, Automobile Insurance and Workmen's Compensation*, 13 SANTA CLARA L. REV. 720 (1973).

MR. CRUDEN: Yes. Even though the law school gave me a full scholarship, we still needed other income as my wife was also in graduate school. My wife and I ran an apartment house in San Jose which had about fifty units, each of them occupied – some by students and some by married couples. We were responsible for collecting the rent and doing basic maintenance for this apartment house which prompted us to learn more about painting, plumbing, and electricity. For this we received a free apartment, modest payment for our maintenance work, and a real garage.

MS. SCARROW: And I understand that your wife was also teaching during this time, at least before your daughter was born?

MR. CRUDEN: While I was in law school, my wife Sharon attended what was then the University of California at San Jose and obtained her master's degree in special education. She then taught at the University of California and later at De Anza College in her area of special education.

MS. SCARROW: And as we noted, your first child was born while you were in law school, was it difficult to sort of balance the family life and school?

MR. CRUDEN: We were quite excited and a little overwhelmed when our first daughter was born at Stanford Hospital. We had a VW Camper bus which I parked each evening in the hospital parking lot so I could be with them in the morning. Kirsten became the darling of the law school – the only child born during our class – and was well known to the law review members. A woman in our apartment complex became her nanny, and Kristen spent a

lot of time as a baby in our VW Camper bus including a memorable trip to Yosemite National Park.

MS. SCARROW: And you graduated in 1974, and I understand that you graduated with honors?

MR. CRUDEN: Yes. I graduated *summa cum laude*. As I recall they gave me as a prize a set of books detailing the writing of the Constitution and a check for $25 for being first in my class my last year. Twenty-five dollars meant we could finally have a great meal in a restaurant in Silicon Valley we could not previously afford.

MS. SCARROW: And upon graduation, I assume that you then took the bar exam.

MR. CRUDEN: I took the bar in California in San Francisco.

MS. SCARROW: Did you have the summer to study for the bar, or did you go right back to active duty?

MR. CRUDEN: Like most of my class, I took a bar review course and then the bar in San Francisco. After taking the bar, my family traveled in a reconditioned police car (that I bought at a police auction) and drove across the country to Charlottesville, Virginia, my first assignment as a new military lawyer, the Advanced Class of the Army's Judge Advocate General's School.

MS. SCARROW: Have you returned to your law school since you graduated?

MR. CRUDEN: Yes, I returned to receive their Distinguished Graduate Award, a great honor. And, I am now an adjunct professor at the school and annually teach a class on Advanced Environmental Law and Enforcement.

MS. SCARROW: Can you tell us more about the Judge Advocate General's Legal Center and School and the Advanced Class you attended?

MR. CRUDEN: Since World War II, the Army's law school has been located in Charlottesville, next door to the University of Virginia Law School. The Advanced Class was a year-long course in all aspects of federal, military, and international law, but they also had a special program that allowed me to simultaneously enroll in the master's program in government and foreign relations through the University of Virginia. I did that dual program for the year.

At the same time my wife was selected as a professor at the University of Virginia in the education department for a special program involving visually impaired and learning-disabled individuals.

MS. SCARROW: You mentioned that you did these two programs simultaneously, I understand that you were the first military attorney who ever did them simultaneously, is that correct?

MR. CRUDEN: That's true.

MS. SCARROW: How did that come to be? Was it just something you were interested in, or does it sound like it was an unusual path to do them both at the same time?

MR. CRUDEN: The Army received some special funding, and when we arrived in Charlottesville, they offered me the opportunity for the dual degree. I long had an interest in foreign affairs and national security, stemming from my time as National President of the XIX Student Conference on United States Affairs while I was at West Point. The graduate school gave me

credit for some of my JAG School classes, and both the military and the college allowed me to submit one thesis to satisfy both requirements. I authored my thesis on the War Powers Act, which had just passed and was quite controversial. I selected that topic at the suggestion of Colonel Zane Finkelstein, then the Legal Advisor to the Chairman of the Joint Chiefs of Staff in the Pentagon.

MS. SCARROW: As part of your War Powers Act thesis, I understand that part of that involved interviewing Dean Rusk, who was the former Secretary of State?

MR. CRUDEN: Yes. In researching the history of events leading up to the War Powers Act, which was a post-Vietnam effort to give Congress more power and restrain the President, I learned of Dean Rusk's unique role while he was Secretary of State. He was then a professor at the University of Georgia Law School, so I called him and set up an appointment.

I then traveled to Athens, Georgia and spent the entire day one-on-one with Dean Rusk where he discussed his own experiences, legal issues he confronted before and during the Vietnam War, and the inevitable tension between Congress and the executive branch during periods of extended conflict. He also gave me his own candid thoughts about the War Powers Act and how a president should react to hostilities in the future and whether or not, and under what circumstances, they should seek congressional approval. I incorporated much of what he advised me in my thesis and have always been grateful for the time he spent with a new lawyer, an undistinguished Army Captain, who was seeking insight.

MS. SCARROW: And even though you published this paper in 1975, I understand that despite the age, it's still the preeminent piece on the War Powers Act.[2]

MR. CRUDEN: There have now been books written about the War Powers Act. Other law review articles have also been written, but I do know that in one important case, Judge Royce Lamberth, then Chief Judge of the United States District Court for the District of Columbia, referred to my article in his discussion of war powers law.[3]

MS. SCARROW: Must be nice that something that you did so long ago still is relevant in the law.

MR. CRUDEN: Yes, and the law remains controversial, but I have re-read my thesis and the subsequent article and still stand behind its conclusions.

MS. SCARROW: Do any of your professors in the UVA Graduate Program stand out to you:

MR. CRUDEN: Yes. Henry Abraham was the James Hart Professor of Government, a scholar on judiciary and constitutional law, and the author of over a dozen books. He served in World War II and received two Battle Stars. He received numerous awards and is one of the best lecturers I have ever encountered. He became friends and watched over my career for many years and visited me in DC. I do remember, however, missing one of his classes because while playing basketball one of my teammates had accidentally broken my nose. When I finally came to class, Professor

---

[2] John C. Cruden, *The War-Making Process*, 69 MIL. L. REV. 35 (1975). See also Cruden, *Book Review, The War Powers Resolution: Its Implementation and Practice*, 24 VA. J. INT'L L. 513 (1984). *See* Appendix 1.

[3] *Ange v. Bush*, 752 F. Supp. 509, 518 (D.D.C. 1990).

Abraham took one look at me and said, regretfully, "John, it was once a pretty nose."

MS. SCARROW: As part of the graduate programs, you were selected to be the outstanding graduate of the class. Was that for the JAG school or for the master's program?

MR. CRUDEN: At our graduation from the Judge Advocate General School, they announced that I had been selected Outstanding Graduate and that my thesis had been selected as the best of the year. I was elated as the year had been quite demanding, my wife was pregnant, and I desperately wanted to impress her, and make her believe our hard work together was worthwhile.

MS. SCARROW: Do you know how you were selected for that? Is that by professors or others?

MR. CRUDEN: The professors at the school made the decision. They announced that the selection was made both on grade point average and leadership potential.

MS. SCARROW: And then upon completion of your masters and JAG school, your first assignment, as I understand it, was in Germany and you were there from 1975 until 1978. You were both a trial and defense counsel in Germany, can you talk about that?

MR. CRUDEN: After graduation we were anxious to get to my first assignment as a lawyer, as my wife was pregnant with our second child and there were restrictions on foreign travel in the last few months of pregnancy. We went together to Germany, my first time there as an attorney, and I was

assigned to a legal center not far from Frankfurt, in the small town of Butzbach. The legal center was in an old historic castle, and we lived in a nearby farming community called Gombach, on the bottom floor of a house with an elderly German couple living above us. I spent the next few years first as a defense lawyer, then as a prosecutor, and that was an amazingly busy time. Each day we were either preparing for, or in court, and I had well over 50 contested cases, many with juries. It was a wonderful time to gain experience in the court room, which helped me the rest of my life. We were all young and hungry for court time and spent every waking moment trying to perfect our burgeoning trial skills. While serving in that position, I was selected to move to Heidelberg, the headquarters of the military in Germany, to become the chief of civil litigation in Germany.

MS. SCARROW: And how were you selected for that second position?

MR. CRUDEN: That position came underneath Army Brigadier General Victor DeFiori who was responsible for all legal activities in Germany. Because I had been the outstanding graduate of my JAG School class, he thought I would be well suited for this special position. That job had two parts, coordinating any federal civil litigation going on in Germany but also providing legal review of the intelligence community's activities. At that time, the intelligence community activities were largely located in Berlin, Bonn, and Munich and I spent a great deal of time traveling to those

locations, reviewing their actions, writing standard procedures, setting forth a myriad of restrictions, teaching, and counseling them.

MS. SCARROW: And you received the Legion of Merit during this time period, can you explain what the award is and what you received it for?

MR. CRUDEN: At the end of my tenure in Heidelberg, the senior JAG General in Heidelberg nominated me for one of the highest peace time awards, the Legion of Merit, for my actions as head of civil litigation. I was somewhat surprised, and quite pleased, as I knew I had spent a lot of time telling the intelligent community things that they could not do.

MS. SCARROW: And while you were in Germany, your second daughter was born, is that correct?

MR. CRUDEN: Yes, Heather Ashley, my second daughter, was born in the Army's Frankfurt hospital. We were then still living around Butzbach and as my wife's contractions escalated, we hurriedly drove to a nearby small medical clinic which promptly sent us to the main hospital, about an hour away. We were getting nervous at our arrival, but all went well with the birth. I can easily recall it because it was remarkably close to the Christmas holidays, and we were just hosting a newly arrived military lawyer in our small basement apartment. A young bachelor, Thomas Tudor, soon had the opportunity to share a miniscule bedroom with a new, loud baby.

MS. SCARROW: Your daughters were of course little, but did you get a chance to enjoy and spend much time around the countryside of Germany? Did your wife work?

MR. CRUDEN: Yes, particularly after we moved to Heidelberg. We were able to take trips to Israel, Holland, Czechoslovakia, England, Prague, Tunisia, Ibiza, and southern Germany. We also went on countless "Volksmarches," normally 10 kilometers in length, with our two small children often in our arms. And the Germans were very understanding and appreciative of young children and were very anxious to help us wherever we went. In addition, my wife, with her expertise in special education techniques, was chosen by the military hierarchy to develop and then organize a special summer camp for disabled children, called "Camp Funshine." It was a huge success.

MS. SCARROW: And you moved back after that period, back to the United States in 1978 when you became a civil trial attorney in the Army Litigation Division at the Pentagon. How did that transfer back to stateside happen and what was that job like?

MR. CRUDEN: In Heidelberg I worked for the demanding, but highly regarded Colonel Arnold Melnick, who later became Chief of Army Litigation Division in the Pentagon. Litigation Division was a highly sought-after position, and he solicited me to come to Washington, D.C. and join the Division. We bought our first house in Virginia, found schools for girls, and I started working in the Pentagon as a civil litigator. It was a great position with

nationwide responsibility, and occasionally international work. Environmental cases were just starting to be filed, and I was involved in many of the early cases, including one that received a lot of press attention in Berlin, Germany.

MS. SCARROW: Can you tell me more about the Berlin case?

MR. CRUDEN: The *Berlin* case was first filed in federal district court in D.C. challenging a housing project that was being built in Zehlendorf, which is a suburb of Berlin. The housing project was being funded by the Berlin government but overseen by the West German government and was for housing of soldiers that were living in Berlin. It was one of the earlier cases under the National Environmental Policy Act (NEPA) and the plaintiffs argued that NEPA should apply extraterritorially. Working with the Department of Justice, we were able to get the case dismissed utilizing the political question doctrine because of the dominant role of a foreign country in the project.[4]

The plaintiffs refiled the case in a new special court that had just been established by the State Department in Berlin to try an airplane hijacker. The hijacker had brought a plane down in the Tempelhof airport, which was famous because of the Berlin airlift, but it was also in the U.S. sector of Berlin.

[4] *See Gemeinschaft zum Schutz des Berliner Baumbestandes v. Marienthal,* No. 78-1836 (D.D.C. November 9, 1978). *See* Appendix 2.

The State Department contracted with a federal district court judge named Herbert Stern to try the case. Representing the government were State Department lawyer Andre Surena and Assistant U.S. Attorney Roger Adelman. While the hijacker case was going on, Judge Stern also accepted the new filing of the environmental case I had been litigating. To represent the government several of us, including then-Assistant U.S. Attorneys Royce Lamberth and Hank Schuelke, a Department of Justice lawyer named Pete Steenland, and I traveled to Berlin to present our position on whether that case should be heard in this unique tribunal. Before traveling to Berlin Peter Steenland and I met with Deputy Secretary of the State Warren Christopher to receive guidance on presenting the position of the State Department in court.

At the end of the trial, the hijacker was convicted by a jury established by Judge Stern but sentenced to time served. Judge Stern then said he would turn to consider the environmental case. We were, however, able to terminate his employment by order from the Department of State. That whole episode became well known as a book that Judge Stern wrote called *Judgment in Berlin* which was later made a movie that starred Sean Penn as the hijacker.

MS. SCARROW: So, are you featured in the movie?

MR. CRUDEN: No, I am grateful to say I was not featured. However, I am a proud member of the Berlin Bar, which has no dues and limited membership, but now includes all of us who traveled to Berlin for that amazing case.

MS. SCARROW: I understand that the Federal Bar Association awarded you the prestigious Younger Federal Lawyer Award at the Annual Conference.

MR. CRUDEN: Yes, I had individually represented in significant litigation the DOD General Counsel Deanne Siemer, and David O. "Doc" Cooke, the Pentagon's highest-ranking career civil servant as Director of Administration. They nominated me for the Award. Brigadier General Ron Holdaway accompanied me to the award ceremony in Denver, my first real exposure to the Federal Bar Association, which I have come to treasure.

MS. SCARROW: I understand during that time period you became the General Counsel of the Defense Nuclear Agency, a civilian position. How did that happen?

MR. CRUDEN: As I gained litigation experience, I was often used by the then-DOD General Counsel, Deanne Siemer, to litigate significant cases for the Department of Defense. Several of the cases involved highly classified operations or important DOD programs. Deanne not only supervised the DOD lawyers, but also all of the general counsels in the DOD agencies. One of them, the Defense Nuclear Agency (DNA), was located in Northern Virginia in its own highly classified building. DNA was one of the successor agencies to the famous World War II Manhattan Project, and was responsible for many significant programs internationally, as well as a great deal of civil litigation concerning its earlier nuclear test programs. I was selected as their General Counsel and then worked closely with the Department of Energy during that time period and coordinated with the

Department of Defense General Counsel, and the Department of Justice concerning significant national security related ligation. What was unusual was that I was a military officer serving in what was normally a civilian position.

MS. SCARROW: When you were the general counsel of the Defense Nuclear Agency what type of responsibilities did you have?

MR. CRUDEN: The general counsel position had extremely broad responsibilities including federal procurement, international negotiations, an extensive litigation docket, and oversight of the testing being done at the Nevada test site. During that time, the Defense Nuclear Agency was also responsible for the cleanup of the Enewetak Atoll, which is an atoll that was bombed with nuclear bombs during and after World War II. And it was responsible for the health effects of nuclear testing by the Department of Defense. I stayed at DNA until I was selected for the Army's Command and General Staff College.

MS. SCARROW: Before we turn to your stint at the Army's Command and General Staff College, I understand that you were awarded the Defense Meritorious Service Medal after you left the Defense Nuclear Agency. Can you tell me what that medal was for and how you were selected to receive it?

MR. CRUDEN: At the end of my tenure as General Counsel, Admiral Robert Monroe, the Director of the Defense Nuclear Agency, awarded me the Defense Meritorious Service Medal, for my work in representing the Defense Department in critical federal litigation, participating in a significant

overseas environmental cleanup, and providing legal advice concerning DOD's nuclear weapons activities, including stockpile management, safety, security, and survivability. Admiral Monroe had been first in his class when graduating from the Naval Academy and was a superb leader and highly regarded in the military.

MS. SCARROW: Now, let's turn to your time at the Army's Command and General Staff College. Can you explain what the Command and General Staff College is, please?

MR. CRUDEN: The Army Command and General Staff College (CGSC), located at Fort Leavenworth, Kansas is a masters-level program for U.S. Army, sister services, and international military officers. CGSC is a ten-month program; the curriculum includes instruction on leadership philosophy, military history, and the military planning and decision-making processes. About 1,200 U.S. military and international officers make up a class, which usually includes five members of the Judge Advocate General's Corps who are competitively selected by a military board.

I was fortunate enough to be selected. My family then moved to Fort Leavenworth in Kansas for that year.

It was a good learning year, and I graduated with honors, but it also gave me time to recover from my second knee surgery, following a basketball injury, and enter 5K and 10K road races.

MS. SCARROW: And then after you finished your time at the Command and General Staff College, you went on to become the Director of Administrative and Civil Law at the Judge Advocate General's School.

MR. CRUDEN: Yes, I returned to Charlottesville, this time as the leader of the school's largest Division – the Administrative and Civil Law Division, which had about twenty Army lawyers serving as professors in a variety of civil law subjects, ranging from labor law to environmental law to advanced civil ligation techniques. I personally taught management and national security law, civil litigation, and management leadership. My interest in environmental law then intersected with my interest in national security law. With professors from the University of Virginia law school, we created the very first national security case book. I helped prepare the outline for the entire case book and then personally wrote the chapter on environmental law and national security. The book is now in its third edition, is widely used, and I have returned to the law school many times to teach my chapter of the book in their national security class.[5]

MS. SCARROW: And you were in this position for three years from 1982 to 1985, are there other particular highlights that stick out in your mind?

MR. CRUDEN: I would say a highlight for me was my meeting with, and instructing, the senior military commanders who were required to come to the JAG School and take legal instruction before they assumed command. Every

[5] John C. Cruden, Chapter 8*, Environmental Law and National Security,* in NATIONAL SECURITY LAW & POLICY, et al., (3rd ed. 2015).

new brigade commander who came through the school took a course called the senior officer legal orientation (SOLO). Generals, who were selected for command positions, were also required to come to the school, but they would receive one-on-one instruction, dealing with international law, how you treat prisoners, legal responsibilities as a commander, military justice, fraternization prohibitions, and the law of land warfare.

I remember very specifically teaching Norman Schwartzkopf in his pre-command course. Schwartzkopf had been on the faculty at West Point at the same time that I had been a cadet. I spent a day with him before he took over his famous command of the Desert Storm operation.

MS. SCARROW: And I understand you also taught management as well as part of your responsibilities.

MR. CRUDEN: The Army considers a key part of legal instruction to include management principles as well as leadership issues. And I personally taught management and leadership to both lawyers and non-lawyers during that period.

MS. SCARROW: And you mentioned writing the environmental chapter for the course book, is that sort of where your interest in environmental law started or just enhanced it?

MR. CRUDEN: Clearly that book enhanced both my knowledge base and my interest. I had done environmental litigation when I had been in the Pentagon, but this was broader and more academic. I purchased my very first Apple computer, printed out virtually every environmental law case that had

been decided by that time, and immersed myself in this new area of the law, which excited me and ultimately led me to a new career.

MS. SCARROW: General Bill Suter, who was the Judge Advocate General of the Army at the time, was your direct supervisor. I understand he would often come to you with sort of special projects. Can you tell us about that?

MR. CRUDEN: The school had a hierarchy of officials and Major General Bill Suter, who later became the Judge Advocate General, was the head of the school and my supervisor. He was also a mentor of mine. I knew his family and he and his wife had been Sunday school teachers for my daughters. I have an extremely high regard for him and clearly, he was a significant mentor of mine throughout my life. And he was very, very well regarded within the Army leadership and so from time to time he was given special projects by the Army leadership.

One of which was developing the anti-fraternization policy of the Army, which is in effect today. Later, I often visited him when he became Clerk of the Supreme Court, and he spoke at my farewell from the Department of Justice.

MS. SCARROW: Were there other similar projects that you remember?

MR. CRUDEN: Other projects that we worked on largely dealt with instruction that was given to new officers and new generals in the Army. I traveled almost every month to Fort Leavenworth Kansas to lecture to new commanders in the Commander General Staff College on legal issues they would confront. Because of my prior non-lawyer experience in the military, I was

able to easily relate to the commanders, often being with them in their informal gatherings, answering their questions about problems they expected to encounter. A highly rewarding experience.

MS. SCARROW: Then in 1985, you returned to Germany for what I believe was the third time as the Staff Judge Advocate for the Third Armor Division. What was your job there?

MR. CRUDEN: Yes, the Third Armored Division was the famed Spearhead Division that led the way in the World War II Normandy Campaign. Later it became famous because General Colin Powell served in the Division, but far more important, so did Elvis Presley!

As the senior attorney for the Division, I was responsible for legal issues of thousands of soldiers and their families as well as all legal relations with the German authorities. The U.S. military divided Germany into geographic jurisdictions for criminal and international issues and the Third Armor Division, which was then headquartered in Frankfurt, had by far the largest geographic jurisdiction. My assignment was the leader of that legal office, equivalent to a U.S. Attorney's office, with five different sub-offices located throughout central Germany. Any international, criminal, or administrative issue that arose within that geographic area was my legal responsibility. I was greatly assisted by my Deputy, Major Don DeCort, who would later be promoted and be the senior legal adviser to the Special Forces Command. The Commanding General was Richard Graves, a highly regarded officer who had a distinguished career.

My position as Staff Judge Advocate included coordinating with German officials in virtually every town that we were in. We also worked with criminal investigators who were a part of the Army Criminal Investigative Division. I had a large office of over 45 attorneys and was frequently traveling to be with one of the five branch offices, attending trial, meeting with German officials, or coordinating plans with the military hierarchy. And, since the military unit trained extensively, all the lawyers participated in the multi-week training exercises, often using it as an opportunity to educate soldiers on the law of war and the Geneva convention requirements for the humane treatment of prisoners.

MS. SCARROW: Where did you live and how did your family fare in Germany?

MR CRUDEN: We lived in a small town not too far from the military base called Kaserne, within walking distance of a German Gasthof, a small neighborhood restaurant, that we liked a lot. My daughters were in U.S. schools, and my wife taught for the University of Maryland, which had offices in Europe. We were able to take several trips to Spain, Scotland, Switzerland, Austria, Yugoslavia, Holland, and France, giving our children a real international education in people and customs.

MS. SCARROW: And I understand you received your second Legion of Merit while you were there at that time?

MR. CRUDEN: I did. One of my jobs was to coordinate almost every day with the various commanding generals on current legal matters. I received the prestigious Legion of Merit for my work leading the legal effort there in the central

part of Germany. Our jurisdiction was one of the largest in Germany, and we had successful relations with German attorneys and local cities. We were rated highly, which led to the award. I must smile, however, remembering the parade Major General Tom Griffin, the Commanding General, organized in my honor when I received the award. This was an Armored Division, and parades were not the favorite thing to do for young tankers, and the parade had more heart than skill.

MS. SCARROW: I understand that you were then selected as one of the few military attorneys to attend the prestigious War College, but you didn't really go. What happened?

MR. CRUDEN: Only a few military attorneys are selected to attend War College each year, and those that do attend are often later considered for selection for senior positions in the military or to become a General Officer. I was quite pleased when then General Bill Suter called me in Germany to tell me that I had been selected, but then he told me about a brand-new program in which I could serve my War College year at the Department of Justice. I readily agreed and became the first military lawyer to do so.

I became the special counsel for the Assistant Attorney General of the Civil Division at the Department of Justice, who was then Richard Willard, and later served under Assistant Attorney General John Bolton, who gained considerable notoriety in the Trump administration as National Security Advisor.

MS. SCARROW: Describe your role as the first military attorney to become a Special Counsel.

MR. CRUDEN: As Special Counsel to the Assistant Attorney General, I predominately led civil litigation and national security litigation involving the military. During that period, I also argued my first case before the U.S. Court of Appeals for the Ninth Circuit, in Pasadena, California, and participated in a number of other appellate briefs. That was also the era where the Reagan administration was actively involved in drug enforcement, and they created drug testing requirements across the federal government. I was responsible for leading the federal drug testing effort, which was based on the military experience of drug testing. With many other representatives from every federal agency, and a small DOJ team that I supervised, we created the drug testing protocols which are still in effect. There was also considerable litigation that arose from those drug testing requirements, and I was involved in those cases because it was a very high-profile priority for the administration. It was during this time period that I was called on to brief President Reagan on the status of both drug testing in the United States, and the status of the litigation as well.

MS. SCARROW: Was that the first time you had ever met a president?

MR. CRUDEN: Yes. I had seen other presidents, but this was the first time I spoke to one and was selected to personally brief President Reagan.

MS. SCARROW: What was that experience like?

MR. CRUDEN: This was the first time I had been in the White House, and I went with other leaders of the Drug Program as the President and his wife both had personal interest in what we were doing. We all knew one another, but then President Reagan came in and sat. He was obviously prepared, and he'd clearly thought through what he wanted us to accomplish. He had excellent questions and then turned them over to me to tell him about what was happening agency by agency. Then, I summarized the current federal litigation as it was obviously something both he and his wife cared deeply about, and I was certainly impressed by his level of knowledge. It was a memorable moment.

MS. SCARROW: You mentioned that there was some litigation that arose as a result of those policies. Was any of that in the D.C. Circuit?

MR. CRUDEN: The cases that I was personally involved in were largely in California, but one of them went to the Supreme Court and Attorney General Thornburg argued that case. I am confident some of the cases were also filed in the D.C. federal courts.

MS. SCARROW: I understand you were also on television then.

MR. CRUDEN: Yes, my work on federal drug testing led me to several TV and radio presentations plus speaking at the Conference on a Drug Free America.

MS. SCARROW: Did you have other particular areas that you focused on during your time as the special counsel other than the drug testing programs?

MR. CRUDEN: This is a time period where suits against individual government employees started to increase following a Supreme Court decision called *Bivens*.[6] The Civil Division, which I was then a part of, created a group to decide when individually sued government employees would receive representation and how that would happen. I was very much involved in that process and advising that group particularly when military people were involved and sued individually.

MS. SCARROW: When you finished your time in the Civil Division, which wrapped up in 1988, I understand that you then returned to military duty as the Chief Legislative Counsel for the Department of Army. How did you get that job and what were your responsibilities there?

MR. CRUDEN: As I was finishing out my tenure at the Department of Justice, General Suter again contacted me to suggest that I take position as Chief Legislative Counsel of the Army, working with Major General Charles Dominy who headed the Office of Legislative Liaison located in the Pentagon. With offices in both the Senate and House, the Office of Legislative Liaison works every single day with all elements of Congress, promoting legislation of interest to the military. As the Chief Legislative Counsel of the Army, I was responsible for all legislative actions, directed investigations, prepared Army officials to testify, and was responsible for all presidential nominations for the Army, both civilian and military. I had a staff of lawyers and non-lawyers and legislative experts that again

[6] *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971).

looked at any piece of legislation that had an impact on the military. We were also very much involved in the annual Defense Authorization Act and coordinated any congressional investigation involving the Army. We all had badges that allowed us to travel throughout the House and Senate. We very often travelled with members of the House and Senate when they were doing oversight visits to military installations, both abroad and in the United States.

I testified on one occasion during that time period on military issues, was on the Hill everyday meeting with members of Congress and their staff, attending and participating in hearings, and working on legislation.

One of my other responsibilities as Chief Legislative Counsel of the Army was to run all of the Senate confirmations of both the political appointees and the Army officers promoted to a higher rank. Because each Army officer was an "officer of the United States," Senate confirmation was required. After their recommended promotion we would send a list of names to the Senate, for confirmation consideration. In only a few cases, usually General Officer promotions, did we have any Senate questions, and even for General Officers most of them were quickly confirmed. Political appointees had a far more rigorous confirmation process, but I was successful in getting Senate confirmation for the Secretary, Undersecretary of the Army, five Assistant Secretaries, and the General Counsel. In each case I accompanied them to meet with Senators,

practiced with them for their confirmation hearing, and then worked with Senate staff on questions they might have. Later, that knowledge became important when I faced Senate confirmation for my position at the Department of Justice.

MS. SCARROW: What was the experience like working with members of Congress?

MR. CRUDEN: Since we were most often working with members and their staff in the Senate Armed Services Committee and the House Armed Services Committee, as well as the Senate Select Committee on Intelligence and their counterpart in the House, we were dealing with extremely knowledgeable congressional members and their staff. Members were largely supportive as it was very common for them to have military installations in their district or in their state and were supportive of military families in general. We were dealing with both experienced people and people who genuinely cared about the well-being of soldiers and sailors and airmen, wherever they were located, but particularly those who were abroad in dangerous positions. And it was helpful that a good friend of mine, Andrew Effron, was general counsel of the Senate Armed Services Committee. He later went on to become Chief Judge of the Court of Military Appeals, the "Supreme Court" of the military.

MS. SCARROW: Do you have any particular highlights from that time period in that position?

MR. CRUDEN: I would give two. The first was my involvement with a Senate investigative team examining illegal drug trafficking issues in South

America. I traveled with a number of the key Senate attorneys, including John Sopko, who is now the Special Inspector General for Afghanistan Reconstruction. We traveled first to Bogota, Columbia, which was then facing a real assault on democracy as judges were being targeted and killed if they decided cases against the drug cartel. Before we arrived twelve of the Supreme Court's 24 justices had been killed, and 36 lower court judges assassinated. We met with both local and U.S. federal officials working there and heard real concerns about the ability of their judiciary to act independently in the face of such violence. Our next stop was Lima, Peru, where we also received briefings and then traveled by CIA aircraft to the Upper Huallaga Valley of Peru, then known to be under the control of the terrorist organization Shining Path. We stayed in a border camp that reminded me of Vietnam, surveyed the area by helicopter, and saw Soviet-made Hind helicopters, vast fields of cocaine, and many heavily armed commandos guarding their drug efforts. It was a sobering effort seeing how entrenched the drug trafficking was in the economy, the obvious role of terrorist organizations, and the danger to the local populace. We then returned to Lima and then flew to La Paz, Bolivia. After embassy briefings in La Paz, we traveled with an armed escort to a special forces camp. We were there for night patrols and the burning of captured drugs, and met with local farmers to get information on what they would need to have to grow a substitute crop. It was an

important trip that resulted in reports to Congress and congressional hearings.

Second, I had a special assignment from the Secretary of Defense during that time period that resulted in me going to El Salvador. During the Salvadoran Civil War, in November 1989, Salvadoran Army soldiers killed six Jesuits priests and two others at their residence on the campus of Central American University in San Salvador, El Salvador. The Jesuits were advocates of a negotiated settlement between the government of El Salvador and the Farabundo Martí National Liberation Front, the guerilla organization that had fought the government for a decade. A U.S. Army major overheard information concerning the Jesuit priest killings and reported that information to me. I advised DOD officials and the Speaker of the House who was then running inquiries into misconduct in El Salvador. I was then assigned the responsibility of taking that Army major to El Salvador with a Special Forces A team to protect us. The El Salvador government assembled a grand jury in the house of the Ambassador where we could be protected, but we were not allowed to stay overnight. The Major then testified as to who he was told by the Secretary of Defense of El Salvador was responsible for killing the Jesuit priests. That later resulted in the conviction of Colonel Guillermo Alfredo Benavides Moreno, the leader of an elite battalion. For many years Santa Clara University had crosses in front of its famous mission church, constructed in 1777, honoring the Jesuit Priests killed in El Salvador.

MS. SCARROW: Didn't you also have an opportunity to travel to Berlin as the wall was coming down?

MR. CRUDEN: I did. Congressman Lane Evans, a Democrat from Illinois, who was on the House Armed Services Committee, asked me to accompany him to Germany to view border security, meet with officials in Berlin, and be with real soldiers in the field. Fortuitously that was just as the Berlin wall was coming down. We travelled to Germany and met with armored cavalry units in Fulda, and other nearby towns, where East Germans were already streaming across the border. There were long lines you could see from our helicopters, all people anxious to escape to freedom. We then spent time in Berlin, particularly along the wall, again watching East Berliners anxious to come across to the West. We all took back pieces of the wall to give to the military. It was such a symbolic time, the opening up of East Germany, and eventually Eastern Europe, making that a very significant trip. Everyone we met was joyful but also anxious, knowing that the transition to a unified country would have significant economic and social challenges.

MS. SCARROW: So, you really realized at the time that this was quite a historic event.

MR. CRUDEN: Without question it was. The United States had a long history in Berlin, from the time of the Berlin airlift to the words of our presidents. John F. Kennedy speaking at the wall saying, "I am also a Berliner" led to Ronald Reagan at the wall, making the famous statement "Bring this wall down." I have been to Berlin many times because of my time overseeing

intelligence units in Berlin, and the Berlin environmental case I mentioned. It is a beautiful city but was divided by the wall in a cruel fashion, acting as a prison-like bar to the travel of Germans. Now seeing the wall coming down was really a moving event, and a reason to celebrate democracy.

MS. SCARROW: And as part of your job, you also travelled to Panama as the war was ending to evaluate that. What was that like?

MR. CRUDEN: I mentioned that one of the groups we worked with a lot was the Senate Select Committee on Intelligence (SSCI). As the operation in Panama called "Just Cause" was winding down, and the hostilities were still ongoing but were contained, the Intelligence Committee sought to visit Panama. They wanted to interview commanders while the operation was still happening to determine whether or not the intelligence they received was accurate, and whether or not there was anything that we could learn from that experience. With very senior staff of the SSCI, I travelled to Panama and spent a considerable period of time really interviewing commanders and talking to them about intelligence they received and whether or not we could learn anything from that experience. It was an especially useful trip leading to a classified after-action report.

MS. SCARROW: So, your position as Chief Legislative Counsel, which ended in 1991, was your last military service. Is there anything that we didn't cover about your military service that you want to talk about?

MR. CRUDEN: In 1991, I was already planning on a next assignment in the military. I really, really thought being a military lawyer was a superb job, and I had been given a fascinating set of assignments and experiences. And to this day I have unlimited admiration for the military, people, officers, and enlisted that I served with. But I was given the opportunity, by the people that I had met at the Department of Justice, to become the Chief of Environmental Enforcement. It was a difficult decision, and I consulted with my good friend Tom Taylor, the Army Deputy General Counsel, in making a final decision. Ultimately, I decided that the position I was being offered in DOJ was so extraordinary that it led me to retire from the Army after 23 years of service. I left the Pentagon on a Friday after my retirement ceremony, put my uniform away, and on Monday started at the Department of Justice, Main Building on Constitution Avenue, as Chief of Environmental Enforcement.

The farewell ceremony from the Pentagon was memorable as it included Major General Bill Suter, then Clerk of the Supreme Court, my West Point Chaplain Bill Ford, Judge Royce Lamberth, many of my West Point classmates, the senior lawyers on the House and Senate Armed Services Committees, and my many Pentagon friends who had served so admirably. My military friend presented me with a wonderful "Book of letters," all personal letters talking about the value of government services and my role. Major General Charles Dominy awarded me the Legion of Merit, one of the highest peacetime awards. And my congressional

traveling companion to Berlin, Lane Evans, introduced a resolution in Congress commending me for my military service. Yet, I was excited to start a whole new chapter of my life, this one focused on my passion for environmental law and policy, centered at the Department of Justice.

MS. SCARROW: Perfect, that was excellent. Thank you.