

On Tax—Mike Schler of Cravath

Len Teti:

Welcome to Season 3 of On Tax—A Cravath Podcast. I'm Len Teti, a partner in the Tax Department of Cravath, Swaine & Moore, a premier U.S. law firm based in New York City. On each episode of On Tax, I talk to professionals in the Cravath network about their lives and work in the world of tax. We focus on the human side of tax law, highlighting the people, connections and stories that make the space such a fascinating and dynamic area of practice.

I hope you'll tune in every three weeks as I sit down with folks from academia, law firms and private industry, along with a few special guests from abroad. It's shaping up to be our best season yet. Thanks for listening, and I hope you enjoy this episode.

Today we're joined by Mike Schler, who's a retired partner in the Tax Department at Cravath. Mike joined Cravath in 1974. He spent 32 years as a partner in the Tax Department, and since 2015 has been a retired partner at Cravath. Mike, welcome to the podcast and thanks for joining us.

Mike Schler:

Thanks for having me.

Len:

Oh, it's my pleasure, Mike. I've been looking forward to this since we started the podcast. You're one of the titans of the tax law of your generation, really any generation. It's been my pleasure in my professional career to work alongside you, first as an associate and then as a partner. And we've got a lot to go through today. But like all of our episodes, Mike, we need to start at the beginning. So, we're curious about how you found your way to the law and tax law in particular. Where should we start?

Mike:

Well, I enjoyed math in high school and so I majored in math in college. I was good enough in college in math to get A's in my undergraduate math classes. But it was obvious to me that the really good people who were going to become mathematicians were getting A's in the graduate courses starting in their freshman year, and that obviously wasn't me. And so I got close to graduation and I didn't know what to do, and so like everybody else in those days when you didn't know what to do, I went to law school.

Len:

I had heard a story that you took a specialized actuarial exam at some point in this period. Is that right?

Mike:

Oh yeah. There is a Society of Actuaries that gave a series of 10 actuarial exams. They get into complicated actuarial issues after the first or second. But I took the first, which is pure math. I sort of knew that. And I got the highest score in the country and it helped me getting good summer jobs with insurance companies over the summer in college.

Len:

And is it that those summer jobs taught you that you wanted to go to law school instead of staying in that industry or what?

Mike:

Well, they convinced me I didn't want to be an actuary. I had always been interested in pure math rather than applied math. I mean, I hated physics, and I didn't like being an actuary any better. So it just convinced me to try something else, and I did. I went to law school.

Len:

And what do you recall about your law school experience and, in particular, when you first got introduced to tax? Because it strikes me that many of the tax lawyers we have, on our program anyway, don't come to tax from the kind of math or even the accountancy side. Most people come from more of the liberal arts and reading and thinking law side. So what do you remember about how you encountered tax law for the first time?

Mike:

Yeah, I don't think there's that much connection between math and tax law, except sort of logical thinking. But I went to Yale and I had Boris Bittker and Marvin Chirelstein, both of whom are titans of the Tax Bar.

And they both got me very interested in tax, and those were the courses I enjoyed most in law school. And so after clerking, I decided I wanted to try doing tax in a law firm. And that's how I ended up coming to Cravath in the Tax Department.

While I was clerking, I knew people from my law school class who had gone to different law firms. And the people I knew at Cravath seemed to particularly like it more than some other firms. So that's why I was interested in coming to Cravath, and I was glad when they gave me an offer.

Len: Let's stop on the clerkship question for a second, Mike. We have some associates at Cravath, who will actually work for a year or two at the Firm in the Tax Department and then they will leave for a clerkship. One of these folks, Andrew Davis, has just been elected a tax partner at Cravath. And after a year here as an associate, he clerked on the Second Circuit for Judge Calabresi in New Haven. Can you tell us a little bit about your decision to clerk and where you clerked, and what your experience was clerking?

Mike: I clerked on the Third Circuit for Judge Rosenn. Our chambers were in Wilkes-Barre, Pennsylvania. The courthouse where we heard oral arguments was in Philadelphia. In those days everybody did it right after law school. Nobody started working and then clerked afterwards. That just was not even a concept that existed at the time. I knew it would not help me doing tax, but I thought it would be a fun thing to do. And it was sort of the only chance I would ever have to do that, so I decided it was worth doing it just to have that one-year experience. And I really enjoyed it and I would do it again under the same circumstances.

Len: So now it's 1974 or so. You are moving back to New York and you're starting as a first-year associate at Cravath. You haven't worked at Cravath before. Tell me what that was like. Who were you working with, and what sorts of things were you doing in those early days?

Mike: Well, the tax partners at the time were George Tyler, Henry deKosmian, Wayne Chapman and Dick Hiegel. What happened was I got to Cravath in October of 1974. In September of 1974, Congress passed ERISA, the Employee Retirement Income Security Act, which is government pension plans. And that whole area of law had been a fairly small area that was taken care of by the Cravath Corporate Department, such as managing the qualification of pension plans. But this law just went from a level of complexity of one out of 10 to 10 out of 10.

And when I got to Cravath, the first thing they did with me and one other associate who arrived at the same time is hand us this little blue book that had the statute, maybe an inch thick. And said: "Will you please learn this? We don't have anybody who knows anything about it. It was just passed and we need some people to learn it."

I actually spent most of the next two years basically learning and becoming an expert in that statute while I was doing regular tax also. And it was very interesting because nobody at the Firm or sort of anywhere else in the world knew much about it. So within, I would say, maybe weeks, but certainly months, the two of us who had just started were not just the Cravath experts, but among the world experts in this statute.

And we developed all the model plans. And it wasn't just pension plan amendments, which is what the Firm did at the time. So there were all these Labor Department fiduciary responsibility rules and all these rules about this newly created PBGC, the Pension Benefit Guaranty Corporation. The corporate people were interested in a lot of these questions. And tax people were interested. And so the two of us really became experts in a very short period of time. We had to because nobody else knew anything about it and they kept asking us. I enjoyed doing that, because I liked learning a new field. But in the end I was more interested in doing regular corporate tax than in pensions as a career.

But it was obvious that I couldn't get out of it for a while because there was nobody else to do it. So I just sort of did regular tax as a hobby in my spare time, while I was doing this as a full-time job. And then after about two years, they let me out of it just because I kept asking. And I got into doing more regular tax.

Len: I want to hear more about your sort of regular tax assignments in a second. But it's worth pausing here and talking about something that's come up on a couple of our podcasts, which is, in some ways, this is a very typical Cravath assignment. Which is to say there's some narrow thing, that in your case happened to be new, but some area of the law that you needed to become an expert on very quickly. And your expertise, developed in a relatively short period of time, becomes very valuable within the Firm and externally to the Firm's clients.

But a case like the passage of ERISA in the '70s or the passage of the Internal Revenue Code of 1986, or even more recently, in late 2017 when the Tax Cuts and Jobs Act passed, there were first-year associates then having a pretty similar experience, where new rules existed and there were very little legislative history or regulations to help interpret them, of course.

And these associates who started as first years in the fall of 2017 very quickly became valuable in much the same way, I think, that you described, because they had the time and the energy to sort of become expert on this in time for our clients to start asking questions. And in some respects, an associate who's done 10 hours' worth of research on some new section of the tax code from the 2017 law knows more about it than I do, or than you do. Well, maybe not than you do, but certainly than I do.

An important part of a young lawyer's practice is not just digging into assignments, but embracing the serendipity that comes with these types of dramatic law changes or new rules.

Mike: Yeah, I think that's right. It's taking advantage of the opportunities, which, as you said, come up so randomly. But when they come up, it's good to show people what you can do.

Len: Right. So now, after a couple of years, you free yourself from the shackles of the ERISA statute and you're into a more mainstream, corporate tax practice at Cravath. Can you talk about what your experience was as a mid-level and senior associate in the department, and what kinds of career choices you had at the time, and how you made the decision to stay at the Firm and kind of make a run to become a partner. What that was like?

Mike: Well, back in those days, the practice wasn't as M&A oriented as it is today. We actually did a lot of audit work with the IRS for our clients. We wrote a lot of protests to the appeals office. That was just part of what law firms did in those days for their corporate clients. Back in the days when foreign income was not taxed to U.S. parent companies, more of the practice was avoiding Subpart F and taking advantage of foreign tax credits, so we did some of that work.

And there was also M&A, but it was at a much lower level, much fewer spin-offs before GU repeal in 1986, when spin-offs became the only way to move assets out tax-free. I was doing just a variety of work. I never did a lot of the financings that a lot of first- and second-year associates do now, because I was sort of past that by the time I got into regular tax.

And also, since I had a been a little behind just learning regular tax, I took the LLM program at NYU at night in tax because we didn't have all the internal CLEs that we have now, teaching associates tax. It was just really voluntary. I thought a good way to sort of catch up and learn things I might not have picked up in practice was to take the LLM courses at night, and I thought it was very useful, although I think it's less necessary now.

Len: Now, of course, this is a world before smartphones and being constantly in touch, so we're talking about a world where you go to work every day from 9:00 to 6:30 or something, and you do all your work, and then you'd leave the firm and go to NYU's LLM class at night. What'd it go, from 7:00 to 9:00 or 7:00 to 10:00 or something?

Mike: I'll never forget. If you wanted to do it fairly quickly, I had to take two classes at a time.

Len: OK.

Mike: And you wanted to do one night a week, so you didn't have to leave early two nights a week. So you did 6:00 to 8:00 and 8:00 to 10:00.

Len: Oof.

Mike: And after working all day, leaving at 5:30 to get there at 6:00 and then four hours of class, that last hour of class was deadly—from 9:00 to 10:00 at night.

Len: And so how would it work at the end of the day like that? You wouldn't go back to the office, would you? Would you just see what was on your desk the next morning? I mean, there's obviously no email, there's no staying in touch. You'd get your phone messages in the morning and keep working?

Mike: The only way to get in touch with you is a voicemail on your home phone. There are no cell phones, no nothing like that. You'd just come in the next morning. Look, you mailed out drafts to people, you waited a few days and they mailed it back to you, or you FedEx'd it. Or, if a real rush, you'd send a messenger. We had teams of messengers delivering things all over the city. Things were not nearly as fast as they are now. Most things got mailed.

Len: It's remarkable, but it's just also very instructive to think about what your day-to-day routine would be, and, even by modern standards, it's grueling to work a full day as a Cravath associate, leave the office, and go to four hours of class.

So, at what point did you decide that you wanted to do this for the rest of your professional career? You got into tax because, in law school, you found it appealing. But what about it as you were an associate and a senior associate, made you decide that this was what you wanted to stick with as a lawyer? Do you remember?

Mike: I liked the practice I was having. You have to like problem-solving. As I always tell associates who ask me, tax is, I think, something you either love it or you hate it, and it really just depends whether you like that kind of problem-solving. You have to be creative and see what the issues are, and how to solve the problems.

And you have to have a certain doggedness just to make sure you see what all the issues are and make sure you found all the cases and rulings that apply to your fact pattern, and you have to have a certain amount of creativity. But if you have that and it's something you like doing, I think it's a great career. If people end up not liking it, then I tell them, "Well, do something else then." You have to like what you're doing in order to enjoy life, generally. You have to like your work.

Len: I think that's great advice. Once you became a partner, Mike, although I didn't meet you until 2004, when I was a summer associate, I have the impression that for 20 years after you became a partner, you were not just keeping up with your work at the Firm, and the matters that you were working on, and the clients that you were serving. But you were also carving out a very unique place in the Tax Bar, especially in the small community of New York City tax lawyers.

Can you tell me a little bit about your work with the State Bar Tax Section, and also what you were thinking yourself, if you were thinking consciously about it at all, about how you were trying to raise your own profile within the bar and broaden your substantive knowledge through this work?

Mike: Well, I was always interested in tax policy from the time I started, not just doing deals, but I was always interested in sort of the policy behind different code provisions and regulations and all. So I got involved both in writing articles and being on panels for different groups, and working with the New York State Bar Tax Section. I worked on a lot of reports, and then back in the early '90s, I was chair of the State Bar Tax Section, which I kept doing. I've been doing it ever really since I became a partner, and I'm still doing it.

But I've always enjoyed commenting on and writing bar reports, and I'm still on panels several times a year, and I write articles now and then on different subjects I'm interested in. I just think it's interesting to see how tax provisions develop and what the policy is, and whether I think it's good policy or bad policy. Nobody really cares that much what I think, but I do have views on most provisions.

Len: Let me just explain for our audience what the State Bar Tax Section reports are. These are maybe 50- to 100-page reports that top tax lawyers in New York City will work on together. And generally, there's a primary person who's responsible for the drafting, and that person might think of the report as sort of his or her own report. But there's a large group of people who are commenting on this, and Mike, besides authoring many of these reports, is always among the commenters.

And if you go back 30 or 40 years and you look at these reports, and you look at the very first footnote, where the primary author acknowledges the support that they got, I believe Mike's name will appear in every one of these first footnotes in every report that the State Bar Tax Section has written. And it is a remarkable testament to your dedication to the, not so much the practice of law, but as you say, tax policy, the commitment that you've given the Tax Bar and your peers, to give your review on that.

Mike: One thing I hope is that having done these outside activities, both writing articles and working on bar reports, I hope I've improved the tax law a little bit compared to what it would have been. I would be very happy if that was one of the results. I'll never know for sure, but I hope I've helped things a little bit in terms of good tax policy.

Len: Well, anyone who knows you well and even some folks who don't know you well, but have encountered you or your work, know that you certainly have. I'm sure that's nearly a universal sentiment. I have many clients my age, Mike, who don't know you, but know of you. And sometimes they'll sort of joke, that I need to go down the hall and see what Mike thinks about any given issue. So your reputation certainly has a very far reach in the Tax Bar.

Mike: I've actually done all that work, because I was interested in tax policy. But it is helpful in terms of client development also. Because even if you've never met people, as you say, people hear of you. They see you on panels. They read about you. Even clients I've met for the first time, say, "Oh I know you. I heard you three years ago in this panel." So you never know where it will be helpful just from purely a client point of view.

Len: That's a great lesson actually for the young lawyers out there, really in any field. First thing you've got to do is show up for work every day and learn the craft. You got to learn how the law works, whether it's tax or securities or litigation or something else. But as you get to be more in the middle of your career, a senior associate and a junior partner, it's a lot about getting your name and your face and your practice out in the world, either by writing articles or participating in panels or just visiting clients, and getting to know people, keeping track of people as they go through their careers. It's a great point.

The other thing I'd like to point out to the audience is, if you have the opportunity to read any article that Mike has ever written, even articles about some relatively nuanced or mundane areas of the tax law, you will find remarkable clarity in Mike's writing. And Mike, one of the parts in my career when I knew I had some potential for success, was by the time I was a fifth- or sixth-year associate, I could give you a piece of expository writing, like a memo or a draft email or something, and it would come back with only a few marks from you. That's when I knew that I was beyond some series of gates. Can you talk about the process of your writing and how it is that you're able to express yourself so clearly when you write?

Mike: Well, it takes practice. And also, you read the final product, but you don't know how many drafts it's gone through. I will sit down and write something and then, a day later, I will look at it and say, "That's garbage."

Then I will write it again and the day after that, I'll say, "Well, that's still garbage." It's usually the fourth or fifth draft before I'm sort of half-happy with it, and then I'll still be playing with it. Because you try to think in a logical way, but I always think of more things, and if I'm writing a paper, I'll wake up in the middle of the night and think of something I should have said or said differently. It's all-consuming.

I think it's important to be able to write things step by step. Often, you end up starting with the conclusion, and then you sort of try to explain in a funny way how you got there. But it's much better to start logically step by step and say how you got there, and then what the conclusion is. You can say in the summary at the beginning, but you really have to explain the logical order to make things clear to people.

Len: I'm sure that people of all sorts of sort of career backgrounds and experiences can relate to what you just said.

Mike: It's also come up in other podcasts of yours, to be able to explain things clearly to tax lawyers as well as non-tax lawyers, who aren't familiar with code sections but just want to know what's the key issue and what's the possible solution, without a lot of jargon. It's sort of the same skill as writing clearly, I think, is being able to express complex thoughts in simple English.

Len: I remember as a junior associate, talking to you and some of the other partners about how I wanted to improve at that. And first of all, you encouraged me, and you said that I was already pretty good at it, which was encouraging. But I also learned, both in my own experience and from the things that you told me, there's no real shortcut to that. You've got to do it a lot. Practice with your office mate or practice into a mirror. But also just practice by getting on the phone with clients over the course of two, four, 10 years, and see what works. That's it. But it is an important skill.

Len: I wanted to ask you, Mike, in the time since you've started practicing in the tax law, 40-plus years, what do you think has changed the most about the practice, and what changes do you see? And how do you view those changes, as favorable or unfortunate?

Mike: Well, one big change is when I started, nobody thought tax was simple, but looking back, those were the good old days. I mean, the code was one smaller volume, and there were two smaller volumes of regs. I really feel sorry for younger associates who are just starting in tax. There's so many technical rules you have to know before you can even get into the problem-solving kind of issues. I mean, back then, people certainly thought it was hard then. I'm not trying to minimize that. But little did they know what was going to happen in the future, that there are just so many more rules you have to know now in order to be a good tax lawyer.

And then when you get a set of fact patterns, first you have to figure out what the clear answers are based on all these regulations and rulings. And back when I started, private rulings weren't even available back then. That was sort of afterwards that PLRs were available to do research on. There was just less you had to do.

And now, it's just hard. Tax is just harder now than it was. I think it's as interesting. I'm happy doing all that stuff as my career developed, but everything is harder than it used to be. And the judgment is the same. Ultimately, you have to make a judgment about whether something works or not. And once you have the background all done, you still have to have exactly the same ability to make good judgments. But it's just more involved to get there to that point.

Len: One of the things I've always admired about the way you practice is you have a very clear sense about the difference between policy on the one hand, you know, what the answer should be if you were making the laws, versus how the law works on the other. But also in the judgments that you draw from existing law, your analysis and explanation is always so clear. One of the things I wanted to talk to you about was how do you think about client service when you have such a strong pull and interest in policy itself? When clients are seeking you out for advice about how the law works and what's possible, how do you think about client service relative to some of your other interests in tax?

Mike: Well, unless you're talking about tax shelters, just normal client advice, I think there's a big difference between what the law is, as you were saying, and what I might think it should be. If the law says you can do something and it's not a tax shelter, which might be picked up by some anti-abuse rule or something, you can do it. I might think the law shouldn't be that way, but, fine, I can do that in a bar report. Learned Hand said people are entitled to take advantage of a law the way it's written, until Congress changes it or the regulations change.

Len: When partners reach retirement at Cravath, you're, of course, free to stop working at the Firm and enjoy retirement. I think you found an amazing thing where you're enjoying your retirement, but you're still doing very much what you used to do. You come into the office, or, during the pandemic, log on to your computer, and you work quite a bit.

One of the pleasures of my career is not just continuing to work with you in that new capacity, but asking first-, and second-, and third-year associates to go ask Mike what he thinks about any particular question. First of all, it's a huge comfort for me, to know that you're there. But it's also an amazing opportunity for them to learn from you. And I sent a couple of associates your way when I was traveling. And the next day, they called me and they said, "Wow, we had a great conversation with Mike. I'm really glad that you suggested that we get his point of view on this." And I thought to myself, this is the Cravath System. You got to do a lot independently, but you also got to ask Mike what he thinks.

Mike: Well, I enjoy the opportunity to do that. I always get very interesting questions from you and the other tax partners. So, it's mutually beneficial. I learn a lot. My goal is just to keep learning. People say, "Oh, Mike knows everything." And the fact is—little do they know—I learn something every day. I know how little I know. One thing I like about tax is just you never finish learning new stuff. It's impossible. There's just an infinite amount of stuff to learn.

Len: I always think before I come to you with a question because I want to make sure it's not too easy. Sometimes I come to you with a question and go, "Oh no, that clearly doesn't work." But most of the time, I come to you with a question and we have a long conversation, and 45 minutes later, you just sort of look off into the distance and you say, "Huh. That's pretty interesting." And that's how I know that it was a real hard one. It was a doozy.

Mike: I invite interesting questions.

Len: Mike, you mentioned the tax partners who were here when you started. Today we have seven tax partners. Have you reflected at all on the ways the Tax Department has changed since you entered it in the mid-'70s?

Mike: Well, we had really good tax partners when I started. I mentioned their names before. And we certainly have a great Tax Department now. I learned a lot from the partners who were partners when I was an associate and the older partners when I was a partner. I learned a lot from them in terms of how to be a partner and just learning a lot of tax and practicing tax law. And I hope that the existing partners think I helped them a little bit also.

Len: For sure.

Mike: So it's a continuum from one generation to the next.

Len: Mike, in the few minutes we have left, tell us a little bit about what you like to do in your spare time when you're not doing or thinking about tax. What are your hobbies?

Mike: Oh, my wife and I like hiking. When there's not a pandemic going on, we've hiked in Switzerland and the Rockies. We heli-hiked in the Canadian Rockies. But we haven't done much of that recently. These days, I just go for long walks in Central Park. I try to go for a five-mile walk every day.

Len: As I recall, you would sometimes walk both ways to the office every day for work, right?

Mike: Before, when I was coming into the office every day, I would walk originally one way, and then both ways. And both ways turns out to be about five miles. And so that's why I got into the habit of doing the same five miles, but outside of the office.

Len: And this has reminded me of one of the most fun sort of traditions you've helped us create in the Tax Department. Would you please tell the group about Peter Luger, and what that means to you?

Mike: During the pre-pandemic days, over the summer, we used to invite groups of summer and regular associates to Peter Luger's, which is just over the Williamsburg Bridge in Brooklyn. And we used to take cars there and then whoever wanted to would then walk back. Most people would walk back over the bridge, which is a really short walk, but it's a very pretty walk. And the serious people would walk all the way back to the office from there. And I did that many times with groups of associates, and we all had a lot of fun.

Len: I mean, when you do it many times, it means some days you do it on July 10th, and it's 95 degrees and extremely humid and the sun is beating down. Other times, you do it on July 11th, and it's 75 degrees and a beautiful day. Sometimes, it's just oppressive, though. And I've done it both ways. I've walked across the bridge and then jumped on the subway, where the air conditioning is a really welcome respite from the heat, and other days I've done it where I walk across the bridge and all the way back five or six miles. I guess it takes us what like an hour and 40 minutes, or something, two hours to get all the way back?

Mike: You know, people have just had a big meal, and it's hot. So, yeah, it takes about two hours if I remember correctly.

Len: That's why we do this on Fridays in the summer.

Mike: Yeah.

Len: So we leave the office around 12:00. We have lunch down there, and we maybe leave at 3:00 or 3:30, and at 5:30, we roll back into the office.

Mike: It's a fun thing, too. People remember the walk longer than they remember the meal.

Len: It's true. But watching Mike order for the table, which he sort of insists on doing, is a real pleasure because he knows exactly what and how much we need and exactly how they cook the steak. And so he's able to really shepherd the whole experience. It's a huge highlight for our summer associates every year.

Mike: Hopefully we'll be coming back in summers and be able to do it again.

Len: That would be great. It would be great. Well, Mike Schler, retired partner at Cravath. It's been an absolute pleasure to talk to you on our podcast. Thanks for being a guest.

Mike: It was great talking to you.

Len: That's all for this episode of On Tax—A Cravath Podcast. You can find us online at cravath.com/podcast, and don't forget to subscribe on Apple Podcasts, Google Podcasts or Spotify.

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I'm your host, Len Teti—thanks for listening.