## On Tax—Ashley Elnicki formerly of Cravath (Tax Department Alumna)

Len Teti:

Len:

**Ashley:** 

**Ashley:** 

Welcome to 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 life 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 enjoy this episode.

Today, we are joined by Ashley Elnicki, a former Cravath tax associate who left the Firm to begin teaching yoga in New York City, and she's currently a private yoga instructor in Denver, Colorado. She will teach an upper-level tax course at the University of Colorado Law School in Boulder in the spring as an adjunct professor. Ashley, welcome to the podcast and thanks for joining us.

Ashley Elnicki: Thanks, Len. Thanks for having me.

Len: It's great to talk to you. Ashley, tell us about your background in the law.

Ashley: I think I'll go all the way back. I was born and raised in Kansas. I honestly can't remember where my initial desire to become a lawyer started. Maybe I read lots of Nancy Drew books.

I knew I wanted to be a private investigator or a lawyer. I just continued with that desire through high school and college. I went to college in the small town near where I was raised, so Pittsburg State University in Pittsburg, Kansas, with no "h."

Everybody thinks—I've had people tell me on my resume that I misspelled Pittsburgh, "Pittsburg," and I have to—

And I'm sure you actually told them that you spelled it right.

"It's in Kansas." Yeah. So I went to Pittsburg State University just with a plan to go to law school. I ended up majoring in Business and Spanish, but really, I wanted to make my way to law school and ended up going to USC in Los Angeles. There, I really thought I was going to become a litigator because, being from Kansas, I just thought that's what lawyers did. I didn't know that there was such a thing as a deal lawyer.

Both summers of law school, I worked at a small litigation firm in Tustin, California, in Orange County, and it was fine. It was good experience. After my second summer, I had an offer from them to go back after law school, but I just wasn't excited about it. We worked on some interesting cases, but I just didn't think litigation was going to be for me. It wasn't exactly what I thought it was going to be.

Len: It's not all like "Law and Order" episodes.

Exactly. It's not like what I read in my John Grisham books. But that was the only offer I had, and I'm sure, as

you know, Len, law firms hire after your first year, basically, of law school.

Len: Right.

Ashley: And I didn't get any big offers. My first year grades weren't great. So my first semester, I had no idea what I

was doing.

Len: First semester in law school, you mean?

Ashley: First semester in law school—really struggled. Didn't know anybody, really, that had gone to law school. My

uncle was a lawyer, but he always lived in St. Louis, which was—oh gee—four-hour drive from where we lived, so we weren't really close or anything. I really just didn't know what to expect. I'd never taken an exam where it was just an essay test at the end of the semester and that's it. On some of these exams, I didn't know what

they wanted, and I didn't give it to them. And so I didn't get great grades.

But by the time I was graduating law school, I kind of figured it out, and I had good grades. And so I was thinking, "I'm not happy with my prospects. At this point I have decent grades, what can I do? It's too late to get a job at a big firm."

Len: And most of your classmates, right, they had their jobs, they have their plans.

Ashley: Absolutely, yeah.

Len: They're kind of running at the clock, and the school, itself, probably is focused on the people behind you and

getting them jobs, and so you're in this weird limbo.

Ashley: Yeah, yeah.

Len: Got it.

**Ashley:** 

Len:

Ashley: Yeah. And so I had taken some tax classes from Edward Kleinbard. I just took Tax I, regular personal income tax with Kleinbard, and I loved it. I took it because you're supposed to take it. It's one of those things that's just a good class to take, and I just loved it. And so then, I took another class with him. I took Corporate Tax

Law with him, and I loved that too.

First semester of my last year of law school, I went and talked to Professor Kleinbard because I'd liked his classes because I'd done well in them, and I was thinking about getting a tax LLM, because that'd give me

another opportunity to get another job, basically.

Len: That's right. That's right, because a lot of firms hire directly out of these LLM programs, which are

one-year programs.

Ashley: Right. So, I'd go for one more year. I got into NYU. I was excited about that. I was excited to go to NYU.

Len: It's a great program, right?

Yeah, and I had even accepted a scholarship from them. And then Ed Kleinbard was writing letters of

recommendations for me, so he saw my resume and he said, "Why don't you just go get a job? You have good grades." I was like, "Well, that's easier said than done, buddy. I've applied. They're not interested." And he said, "All right, let me make a few calls." So then, right away, I start getting offers for job interviews, and I fly out to New York a few times. I flew to DC. It just started happening really fast. I knew he was something

because I had him as my professor, but that's when I realized, "Wow, when he talks, people listen."

the day, and eventually became a partner at Cleary Gottlieb for many years before he became a professor at USC. And he passed away last year, which was tragic, but he was, as a professor, a particular bright light in the world of tax policy and tax policymaking. And he would give speeches and keynote talks at tax conferences, in addition to his academic work. And, by reason of his long experience, and his quality

Let me stop right here. We'll talk a lot more about Ed Kleinbard, but Ed was a Cravath tax associate back in

experience as a top practitioner at these firms, he had a lot of credibility and a lot of brilliant insight and policy judgment, but also balanced with what was practical and what taxpayers who were doing transactions could do, and that put him in a very important place in the tax universe in that kind of role for many years.

It's a totally separate discussion about what kind of person he was and the effect he had on individuals with whom he crossed paths, like you, but we remember him very fondly here. And there are still people practicing in the Tax Department who were here and colleagues with him when he was a tax associate. I know you know that.

So pick up the story. Ed starts making phone calls. He goes through his Rolodex.

Ashley: Yeah. He calls Mike Schler. So then I start getting interviews, although there really weren't that many because—kudos to Cravath for even being open to interviewing me—there were so many firms that were just like, "Oh, sounds interesting, but we're full. We've hired everybody we're going to hire. We've filled up every spot we

have. We just don't have any spots." Of course, I understood that. That's really where most firms were, but Cravath, just the nature of it is a lot more flexible, and so you guys gave me an interview. And I didn't know

that you made offers the same day. I had no idea.

Len: On the spot.

**Ashley:** On the spot, had no idea—and so I left, and then Steve [Gordon] calls me as I'm taking the train to DC to go

on another interview. He called me on the train. I remember I was in the quiet car, so I had to go in between the cars to take Steve's call. And he gave me an offer, and I just was shocked. I didn't think you guys knew what you were getting into with me, but then eventually, you did hire me and I worked there for a while, so I

guess it worked out.

But I never dreamed that I could end up at a firm like Cravath. I wasn't happy with my job prospects, but I never thought I'd end up at Cravath, and I'm just really happy to have had the opportunity.

Len: Ed must have been very proud and probably not at all surprised when you came back with offers from Cravath

and, presumably, other places.

Yeah. **Ashley:** 

Len: Did he give you any advice about which of these offers you should take, and what was his guidance?

Oh, yeah. He gave lots of good advice. I refer to him as my tax dad because he's like my mentor, and he gave me lots of advice. Obviously, before I went on the interview, I'd done some research and I knew what a great firm Cravath was and just what a great start to my career that would be, so I wanted that. I think he was just happy that that's what I wanted. I think that's what he wanted, too.

> So, that was pretty easy, but he was so helpful when I was moving. I never spent a day in New York, other than these interviews. I'd spent three nights, maybe, in New York on interviews before I moved to the city from LA. He was just so helpful with everything, with transitioning to the Firm. He'd worked at Cleary for, geez, I think over 30 years or something like that.

He knew everything about working in a firm, and he was just always a great resource, very encouraging. He was not happy when I left Cravath the first time, and he was so happy when I came back, so I guess we should maybe talk about that.

Okay. Well, that's a great part of the story. So, it's the fall of 2012, here you are from Pittsburg, Kansas, with only one lawyer in your family. You've got three years in Los Angeles under your belt and a strong recommendation from Professor Kleinbard, but you show up on Eighth Avenue as a first-year tax associate at Cravath. I think, at the time, I must have been a seventh-year associate. It must have been the fall Imade partner. So tell me about what that was like. What were your first sort of impressions of the Firm as an associate, and what sorts of expectations did you have, and what sort of observations did you have at the time?

Initially, I thought I was going to feel like a fish out of water because I didn't know anything about New York. I never spent any time there, and it can be kind of intimidating—and then all of a sudden, all my colleagues now are really accomplished professionals, and I was scared. But honestly, I even noticed this during my interview, everybody's just nice, just having nice conversations.

I was surprised by just how normal everybody was. I didn't expect these Harvard Law grads to be as nice and normal as they were. I just didn't know what to expect. I'd never been in this world before.

Len: Right.

> I was just pleased by how well I fit in. I didn't really expect to fit in, but honestly, I felt like I fit in better there than I'd ever fit in anywhere before. I was with a bunch of people that were interested in tax. I was interested in tax. They're all smart, hardworking professionals. It was really nice.

We all sit on the same floor in the Tax Department, and so it ends up being a fairly social practice, much more than anyone who doesn't practice in the Cravath tax group, including other people at the Firm, would appreciate. Do you remember what sorts of tasks you got early on in your career, what sort of work you were asked to do?

**Ashley:** 

Len:

**Ashley:** 

Ashley:

Len:

**Ashley:** 

I remember working on lots of notes offerings and quite a few credit agreements. Most likely, quite a few with you probably.

Len:

Right.

**Ashley:** 

I really liked those because that was something that the more senior associates could train us on one or two times. And if it's a plain vanilla debt offering, it's something that after you're trained on it once or twice, you can handle on your own, and you guys let us handle it on our own.

Another thing I was surprised about was just how much responsibility you gave us, but it really allowed you to become the professional that we were trained to be, and I liked that. It was scary at the time, but I liked how you guys kind of threw us off the deep end. You were like, "Okay, you know how to do this now. This is your notes offering, and come to me only if you have questions."

I like having control over things. I like being able to own something. So I like how you initiated us to the tax practice with those little deals, but you really gave us the experience on how to run a deal so that when we got into bigger M&A deals, we had some experience working with the client, working with corporate associates to make progress.

Len:

Over time, you came up through the ranks, became a mid-level tax associate. We all loved working with you, but I think especially the junior associates really liked working with you because you're very calm, very capable. You don't get flustered, and you encouraged the others to stay calm and sort of work through issues also. But then one day, I forget exactly when it was, you walked into my office and you closed the door and you just said, "I'm leaving." I think we were all sort of stunned by that. In your case, it seemed sort of premature, but you had a plan. Why don't you tell us about that?

**Ashley:** 

Yeah. My husband, Andy Wachter, has a tech startup. He started 2015, I believe, and by 2016, they were really kind of starting to get it off the ground. They were hiring people. They needed to set up payroll and insurance, form legal entities, and everything you can think of to start a business. There's a lot of processes, really, to just get set up—accounting processes, sales.

So what they do is they sell workflow software for sports, and at that time, I was working a lot. I was busy at Cravath, I was feeling overwhelmed, and I didn't really know what to do. I was just kind of looking for an out, and Andy's business needed help. Just being a lawyer, you have some experience in forming legal entities and just how to organize a business—

Len:

And figuring out how to do what you don't know how to do, just figuring stuff out.

Ashley:

Yeah, exactly. I left the Firm in early 2016 to help them. The business was just kind of starting to get off the ground, and I really wanted to have a place in it, and I really thought that I would. Andy and I work really well together, but it was very clear right away, as soon as I left the Firm and started working for them, it was not for me.

Len:

Uh oh.

**Ashley:** 

Every little decision, you feel like you're walking in a minefield.

Len:

And you knew this right away, you just felt it?

Ashley:

Yes, I really did. We were both working on this business, and I was just miserable. And I was like, "Why did I leave? I was so much happier at Cravath."

I didn't know what I want, I'm confused. "Will they please take me back?" is what I'm thinking in my head, and so then I talked to Chris.

Len: Chris Fargo?

Ashley: Yeah, I talked to Chris Fargo.

**Len:** One of our tax partners.

Ashley: That's right, and I don't know if I told him I wanted to come back or if he made me feel like I could say I

wanted to come back.

Len: Okay.

Ashley: And then that was that, and then I was really happy. I was really happy. I came back later in 2016, and I just

felt more sure of what I wanted and how I wanted to spend my time, and I was a little more senior, and always had more juniors. My first few years, obviously, I'm junior, and just the type of work, and the amount of control you have over your time was just different. And when I came back later on in 2016 with a little bit more experience, I had more juniors on more of my deals and just felt more comfortable. I really had a good

experience there.

I mean, we should emphasize for listeners who aren't familiar with Cravath or with big law firms, generally, that it is a very unusual thing to leave big law and come back to it. That's unusual, but it is especially unusual to leave Cravath and come back to Cravath. It happens, but it doesn't happen very often. Most people use a firm like Cravath as a launching pad, as the first phase of a professional career that's either going to end in

law or end somewhere else. And some people leave on a mistaken assumption that they will enjoy something else more, and they have the same feeling you had about how this was a mistake. But most of those people

don't come back.

It was such a thunderbolt really. We were so excited to have you come back and work with us, and your second stint at Cravath was several years long and, really, just as good as your first. But, for the reasons you've already mentioned, it was different kinds of work—more advanced work, more responsibility, more supervisory role over young lawyers—and that's very valuable, both to your own development, but also to us.

That was a great couple of years too, and then history repeated itself and you walked into my office one day, and you closed the door, and you said, "I'm leaving again."

Ashley: I know.

**Ashley:** 

Len: And I probably didn't say something snarky, like, "Well, you'll be back, I know." So tell us about that decision.

Ashley: Yeah, so that was a more well thought-out decision, fortunately. I felt like I had a really good experience there. I came back. I enjoyed the job. I enjoyed all my colleagues. I had made so many great friends at the Firm, but at the end of the day, I had just decided even though I'm not 100% sure exactly how I want to spend all of my time, I just don't think that I want to spend all of my time in an office working on these types of transactions.

It's interesting, it's fun, but I have a lot of different interests. It's too much time for me to spend on one thing to not be super, super passionate about it. I was into it, but I don't know that it was a passion, necessarily.

In the meantime, I got really into yoga. It's just such a great stress reliever for me, and when you're practicing yoga, you don't bring your phone into the studio, and you're just totally disconnected for an hour. And just what that hour did to me, how much energy mentally, physically, everything it gave me was just really powerful, and I just have to have my little yoga time every day or almost every day to help keep me centered.

Len: Was it something that you just started doing around that time or had you done yoga on and off for a while?

No, in 2015, I started practicing yoga just on a whim. Actually, Andy's sister was doing an internship in New York, and so she stayed with us for the summer and, she's like, "Hey, let's go to this yoga class. There's a yoga studio right down the road." I'm like, "Okay."

So we started going and there was a three week intro period, and by the end of the three weeks, we were both hooked. And we just continued practicing the rest of the summer, and I've continued practicing ever since. I'm honestly not exactly sure what it is I want to spend all my time doing, but I'm fortunate to have time to have some space and just kind of think about it.

I spent three weeks in Costa Rica getting my yoga teacher certification, and then I started teaching in the city and I honestly—when I went to do my yoga teacher certification, I didn't know if I would want to teach. I just wanted to try it just to advance my practice, and maybe I'll want to teach, but I really enjoyed it. Maybe someday I'll open up my own yoga studio in Denver.

Len:

How did you choose Denver and Colorado? Do you have any connection to Colorado?

**Ashley:** 

No, not really, other than growing up my family went skiing pretty much every spring break from when I was really little. It was right next to Kansas, and that's our driving trip. When you're in middle of Kansas, you drive everywhere, and you'd never make it to the ocean, so we just made it to the mountains.

I really like to ski, and I like to hike. I just like being outdoors. So when we decided that we wanted to leave New York—really, we love this city, but there was no reason for us to be in this little 800-square-foot apartment when we could live anywhere doing what we're doing.

Denver just stuck out as a really cool wellness, outdoors-oriented city that would be a good spot for a yoga studio. We bought a house in Denver that's an hour and a half from Breckenridge, less than an hour and a half to the mountains. It's just a cool city.

Len:

That's great. Let me ask you to spend a little bit more time talking about Ed Kleinbard, your professor from USC. And let me ask you a question, and maybe you can use your experience with Ed to answer it. You've been at Cravath twice, and you've seen tax lawyers, both at Cravath and other places, practice law. You've probably seen good examples and bad examples of tax lawyering and lawyering in general. I wonder what kind of personal characteristics you admire most in the tax professionals you've seen, and I would be happy to hear you talk about Ed Kleinbard in answering that question.

**Ashley:** 

One thing that came to mind as you were asking me that question, is just communication. Ed is a very effective communicator. I think tax concepts are really foreign to a lot of people, it's a whole new world—

Len:

Right.

**Ashley:** 

—with new words. It's a whole new language and different concepts. Obviously, as a tax lawyer, you have to understand that world, but you also have to understand the real world, because that's where everybody else is living. So to be able to navigate between those two worlds, you know, "I know that this is the way you're transferring that asset, but in the tax world, it's going to be treated this way."

Len:

Right.

Ashley:

And just to explain that to them in a way that makes sense, and they understand and it's clear. I think that's really important because you're working with non-tax people; either non-tax lawyers or people at the client who don't have any tax background. I think communication is a really important factor for a good tax lawyer.

And speaking of Ed, when I was at USC taking his classes, I would be rolling sometimes, laughing. I mean, he was so entertaining. Who can make tax law as funny and entertaining as Ed Kleinbard? Nobody can. Like when he spoke at the NYSBA Tax Section luncheon a few years ago and I just—

Len:

That's the New York State Bar Association tax section; 1,000 tax lawyers in one lunch room.

Ashley:

Yeah. I just remember, at least everybody at Cravath, if not everywhere, were just so excited to hear what he had to say because they knew it was going to be interesting. It was going to be entertaining. Every time he opened his mouth, he had something important to say, and he also said it in a really funny way.

Len: That's a great summary of it, because it wasn't jokey for its own sake. He was making some serious policy points.

**Ashley:** Yeah.

Len: And he'd do it with a real sharp wit. It made his policy preferences clear, but it also made them compelling. How often did you stay in touch with Professor Kleinbard when you were working at Cravath? Frequently, I'd

take it.

**Ashley:** I would check in with him every once in a while. He'd check in with me. He'd come to New York from LA for various conferences and we'd sometimes get together for breakfast when he was in town. Obviously, I kept him very apprised of my comings and goings at Cravath, and when I returned to Cravath, I remember him

sending me an email saying he was looking forward to lighting a candle in honor of my election to the partnership. He was so encouraging. To have someone like him say that to me really gave me confidence.

Sure. Len:

Because he knew what he was talking about. In hindsight, I don't know that that's really what I wanted, but, when I was at Cravath, I thought that might be what I wanted, and to have him have my back any time I was thinking about a different career choice, I'd always bounce ideas off of him. He always wanted me to stay at Cravath.

> Yeah, that's what he wanted. But by the time I left the second time, he was like, "Okay, you've been there long enough. You're mature enough. You know what you're doing." He reluctantly respected my decision. But of course, he did. He's so supportive. I just want to tell this is a funny story.

One time, Ed invited me and another Cravath tax associate who worked with Kleinbard when he was at USC, and another USC alum who was a Cravath tax associate at the time.

That's right. There were three of you in the last decade.

Three of us all at once. Kleinbard, since he knew all three of us from USC, we were all three now working as tax associates at Cravath—

Right.

—thanks to him, and had us all over to his apartment. We all came over and it was just like a nice little, "Hey, look at where we are. How fun! What a nice little get together." And we weren't there for more than probably an hour and a half or so. We had a few drinks, and all of a sudden he just decided it's over. I don't know if it was dinner time or they had reservations, but this is just the way he is. He was, "Okay, that's it. Shoo, shoo. How can I miss you if you won't go away? How can I miss you if you won't go away?"

That's what he said, and he kicked us out. He basically kicked us out of his apartment. We were all laughing. It was so funny. He's just a character, a real character. I'm forever grateful for everything that he ever did for me, and I was incredibly upset to hear that he passed last year. I remember that morning because I knew he was very sick. He had really serious cancers that he'd been fighting courageously for years.

And I just remember that morning when I found out that he had passed, I was shocked—and it wasn't because he wasn't so sick, you know, he'd just had a really complicated surgery and everything. He was just, in my life, he was just larger than life. It just didn't seem right that somebody like him could pass like that, and too soon. So it was very upsetting, and it's very sad for the tax world, his family, and everybody that knows him.

I remember this happened in 2020 during the pandemic, and I remember his family and friends organized a Zoom memorial. And there was a very few number of people who were asked to speak at that, and you were one of them. And I remember watching it and all the tax partners watched it, and talked to each other about it. We had a lot of pride to see you representing that part of his life, but it was very clear in what you had to say how much of an effect he had on your life and how much gratitude you had for that.

Ashley:

**Ashley:** 

Len: **Ashley:** 

Len:

**Ashley:** 

Len:

**Ashley:** Oh, yes. He changed my life. It's like I did an experiment. I sent out all these resumes pre-Kleinbard.

Right. Len:

**Ashley:** 

No takers. And then talked to Kleinbard. He starts making calls, sent out my resumes, and I start getting interviews, and when I went to talk to him, he didn't even remember me. It's all blind grading at USC. There were 67 kids in my class. And I took his classes, I liked his classes, but I was just another student when I first went and talked to him about getting a tax LLM. I know I said this during that memorial, but it just didn't sit well with him that I could have good grades from a good school and not get the kind of job that I wanted.

I was just another student, and he really went out of his way to help me. And I think if you read his books, he's written two books. This one just came out, What's Luck Got To Do With It? How Smarter Government Can Rescue The American Dream. If you read that, you'll see just the strong sense of fairness and justice that motivates everything that he does, and that's why I think when I went into his office, he was like, "This isn't right. How can I help? She's done what she's supposed to do, went to a good school, got good grades, and she can't get a job." So he just took it upon himself to start helping me, and he did. And he continued to help me for the rest of my life. But again, he did that, as we've already mentioned, to two other associates that ended up at Cravath.

Right.

Who knows how many others he helped get jobs at other firms? He was very generous with his time and he's busy. He was always writing 1,000-page articles, it seemed like every other month. But when a student came in and needed anything, he listened. He really cared about his students.

There's a couple of good lessons here. One is, for somebody in your position, Ashley, somebody who has done all the right things and things haven't worked out ideally or the way that one wanted, don't get discouraged, don't lose hope. Keep finding people who are willing to help you, and ask for help. This is true in any number of aspects of life, to ask for help when you need it. But that's one lesson, is not to be discouraged, and keep running through those walls.

But another good lesson that Kleinbard teaches us is, from the perspective of someone in his position, which is just because you're a tax professor at a kind of ivory-tower top law school doesn't mean you can't help save the world one little injustice at a time.

**Ashley:** Yeah.

He saw something that he viewed as unjust in your case, and he did what was in his power to fix it.

**Ashley:** Yeah.

> And same with the other two associates you mentioned who came to Cravath, but also I'm sure same with a countless number of his students for whom injustices, large and small, he worked to fix. So, you don't need to be doing front page of the newspaper injustice fixing. There are various different ways in your field of view, in your professional place, and that's a good lesson for everyone as well.

> Ashley, in the few minutes we have left, I wonder—we've already spoken quite a bit about yoga and some of your outside interests—but I wonder if you have any other interests, at the moment, that you're spending time on or focusing on.

> Well I'm doing a lot of yoga, and I've gotten more into meditation. One of the eight limbs of yoga is meditation. I do spend honestly, probably two hours every day doing yoga and meditation, which is really nice.

And I have two cute little dogs too, and I like to take them out on walks. Right now, the only real fun we're having is we have been making it out to go skiing.

That's great. Well, as you know, we're very big skiers in the Cravath Tax Department.

Len:

**Ashley:** 

Len:

Len:

Len:

**Ashley:** 

Len:

Ashley: I know. I'd love to meet up with you on the mountain some time just skiing.

**Len:** We'd love to do that. That sounds terrific.

Ashley: Yeah, yeah.

Len: Well Ashley, I'm really taken by the expression that Kleinbard used when he shooed you out of his apartment.

Ashley: How can I miss you if you won't go away? Shoo, shoo.

Len: Now, you've gone away twice from Cravath, and we hope that you'll stay in touch with us. Of course, we know

you will.

Ashley: Yeah.

Len: And it's awfully great treat to get to catch up with you today, and we really appreciate your joining us on this

podcast. Thank you.

Ashley: Thanks, Len. It's been fun.

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

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