

William Winslow Crosskey—As I Remember Him

Charles O. Gregory

I well remember the first time I ever heard of Crosskey. That was the fall of 1923, when I was a first-year student in Yale Law School. My brother-in-law, Charlie Clark, had told me about the fabulous “Russian”—Crosskey—who had begun law school in 1922 and had taken off the following year to earn money, to resume school in the fall of 1924. Of course, I thought of him as Krosky, because I had never seen his name spelled. As it later transpired, his name was of Irish origin. At any rate, he had already become a legend in the law school—a student who never appeared to work but who ended his first year number one in his class.

When I first saw Crosskey, I was impressed by his age and maturity. He was then thirty years old but seemed far more grown up than his classmates. After graduating from Davenport High School in 1912, Bill apparently began the first phase of his outside business career which he ended up as a Wear-Ever aluminum salesman, since he early assumed financial responsibility for his entire family. At any rate, three years later, in 1915, he entered Yale College, from which he graduated with an A.B. degree in 1923, his college years having been punctuated with leaves of absence to earn money selling aluminum.

During our second year in law school, Bill and I became close friends. All of us who were on the Law Journal—except Crosskey—worked fantastic hours to keep up our grades and at the same time write notes or comments. While he managed to stay on top of everything, Bill never seemed flustered or under pressure. Many a time, when I was immersed in books preparing for classes or working on a law review note, he would saunter over to chat and occasionally to talk me into going to the movies. In my first years the law fascinated and, in a way, terrified me. It was so new and complicated, so mysterious and endless in scope. But even then Crosskey just took it in his stride, saw right through most of it and was somewhat bored by it. And all during this time he was selling aluminum on the side to get along!

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The rest of us law students all kept elaborate notebooks, briefed our cases and jotted down whatever we could during classes. But Bill never had a notebook in any course that I knew of. He did have casebooks; and during classes he scribbled occasional notes in the margins. We were all sure that he never read cases in preparation for classes. One day Charlie Clark called on Crosskey to state a case. I'm afraid we sniggered at his equivocal recitation; and he brought the house down by boldly declaring: "Professor Clark, if you can control your class, perhaps we could get somewhere with this case." Nevertheless Crosskey always insisted that before the final exam in each course he read every case in the book—a claim we had to believe when he turned up with the usual string of A's.

In spite of our working hard as law students, we still wasted some time sitting around talking about law and what we were going to do after graduation. Crosskey joined these sessions, always ready to speculate about the past, present and future. But he never reviewed for exams with anybody. I belonged to a small review group consisting of Jack Curtis, Art Corbin, Joe Trachtman and myself, with Cam Becket occasionally joining us. We figured that what one of us didn't know, one of the others surely would—and this system worked very well. Apparently Bill needed no such prop to succeed. Nevertheless we always had him down as the senior member of the mythical law firm we planned, to be named Crosskey, Curtis, Corbin, Becket, Gregory and Trachtman. We knew this was just talk; but it was very pleasant talk, indeed.

When we graduated, Crosskey became Chief Justice Taft's law clerk for a year. They must have made quite a pair, for even then old Will was no lightweight. After that Crosskey went with Davis, Polk where he worked closely with John W. Davis for some time. Mr. Davis is reputed to have said that Crosskey's mind was the best piece of legal equipment he had ever encountered. Sometime later Bill acted briefly as house counsel for a corporation. But he was bored by the relative inactivity of this job and gave it up to write a brief for John W. Davis—an independent venture that took him far longer than he thought it would. Indeed, so long did this commitment take that he felt unable to go through with an appointment to the Yale law faculty, a decision which unfortunately was not followed by another offer. In any event, after a couple or three more years in Wall Street, Bill was appointed to the faculty of the University of Chicago Law School in 1935—Yale's loss being Chicago's gain! Thus he was right back where he started from, for Bill was born in Chicago—on Cottage Grove Avenue—in 1894.

Naturally I was delighted to have as a colleague and a neighbor my

old friend from law school days. I forget what Crosskey taught when he first went to Chicago; but one of his subjects was taxation. There had been no such course at Yale in our time. The only glimpse of this subject we had was in connection with jurisdiction to tax in constitutional law. And I understand that this is what Bill taught the tax course around. Anyway, I would not be surprised if that is the way he got interested in the Constitution, which he quickly came to regard as the most misunderstood and misconstrued document ever written. About that time Roosevelt and his cohorts were trying to re-make the country—and had not been having much luck. Bill was quite sure that Congress had the constitutional power to do all the things the administration was backing in those days; and he suddenly decided that he would write something to show them how they could do it. I think originally it was to be an article—which eventually grew. Thus began his great treatise on Politics and the Constitution which, after fourteen years of extensive and painstaking research all through the South, the East and the Northeast of the land—topped by masterly writing—was published in 1953. In the meantime, of course, the Supreme Court had blithely gone ahead and in its own way had found in the Constitution all the powers Congress needed, to do anything it wished—and then some!

I always thought it a shame that events did not wait on Bill at this juncture of his life. But the fact that history got ahead of him did not bother him in the slightest. He seemed quite content with proving that the Court had got off the tracks away back—and whether it got on again, with or without his help, did not seem to worry him. During his research, however, he discovered (to his satisfaction, at least) that Madison and Jefferson were rascals. And he soon thereafter became aware that rascality had survived in high places in our times. Of course Bill tried out all sorts of ideas on the rest of us while the book was being written; and I recall how magnificent Malcolm Sharp was in reading, criticising and discussing the validity of Crosskey's basic ideas. It has always seemed queer to me that anyone who did the vast amount of work he did—search and re-search such as nobody in that field had ever done before—was so cold-shouldered as he was by the Harvard people and a few others who hadn't done anything like the original work he had done in this field. Anyway, Crosskey stood by his guns—and had much enthusiastic and solid support for his thesis. But Mrs. Gregory took issue with him on one aspect of his book. After we left Chicago for Charlottesville in 1949 she read a great deal about Thomas Jefferson and became one of his ardent admirers. When Crosskey visited us, she told him what a terrifically versatile and accomplished man Jefferson was; and Bill seemed quite chastened—almost ready to

revise his opinions about T.J. I recall Mrs. Gregory asking him if he could sleep securely within six miles of Monticello!

Crosskey was a wonderful man and a great man. I know that some people thought him to be short-tempered, crusty and at times vitriolic—not to say prejudiced. He had the staff in Harper Library so quelled that they had one set of rules for everybody else—and another set, much more relaxed, for Bill. At the same time the library staff acknowledged that he got results; and they were probably delighted to have somebody using the books that he had piled up in his apartment and in his office. Crosskey had a lovely smile and a marvelous sense of humor—at times. Of course, he did have his notions; and he frequently pursued them to the limit with his close friends. I recall once when he came into my office toward the end of the day. Usually I would succumb and go for a walk with him on the Midway or in Washington Park. That was before he was crippled with arthritis. On this particular day, however, he was inclined to talk; and I remember lashing out at him: “O.K., Crosskey; I’ll stipulate that Chicago is a hell of a place to live and it would be nice to have a million dollars. Now let’s talk about something else.” I have never seen such a wonderful smile or heard more pleasant laughter than that which ensued. Here was the man who was never sure that he shouldn’t have been a physicist, who regretted not having become a good football player at Yale, who liked to drive very fast—preferably a Cadillac or a Chrysler Imperial, who inquired what the altitude was when ordering a soft-boiled egg for breakfast, and who in his later days developed a real flair for hi-fi equipment. He was never at a loss for something to talk about; and he loved to talk on into the night—if not about the Constitution and its history, then about almost anything else.

During his last years at Chicago, where he retired in 1963, I saw Crosskey only occasionally—when I made flying trips to Chicago—thereafter in Washington the year he taught at Howard, and a few times in his new home in Woodbridge or in his son John’s home near Hartford. All through these years Bill was badly crippled with arthritis and after he went to Connecticut he began to get really ill. But there was nothing wrong with his mind, although he was constantly impatient with himself for being so slow in getting around to finishing volumes three and four of his great work. I prefer, however, to think of him as he was in the late 1940’s—just before I went to Virginia. Then and shortly thereafter he was at the height of his powers—and that was very high, indeed. His tremendous work on the Constitution was just being pointed up for the printers—without doubt the most original

piece of writing ever done in that field and one that will have a lasting impact on those who study the Constitution and its history.

Crosskey was a truly great man, with great qualities, both intellectual and personal—and to those of us who knew him well he was a lovable man. He had great intensity of purpose, with terrific integrity; and he was a fighter who would defend his convictions against all comers. He had a superb and wonderfully lucid mind which he knew how to use in detecting and confounding the legal and constitutional heresies of others, even if some of his critics thought that he also used it to create a few of his own. The legal world has lost an outstanding scholar and an extremely good lawyer. As for me, I have lost a very dear friend. And I shall always remember him with the keenest pleasure and be proud that I knew so well a person of his stature.