

Yale Law School  
Oral History Series

A CONVERSATION WITH

**BORIS I. BITTKER**

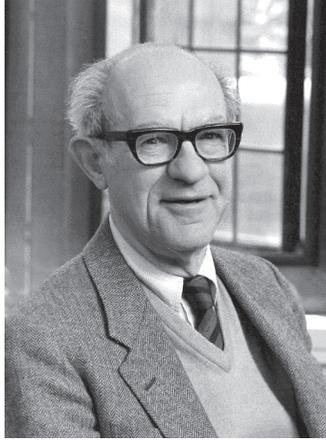
*Interviewed by Bonnie Collier*

New Haven: Lillian Goldman Law Library  
Yale Law School, 2013



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1916–2005

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## *Yale Law School Oral History Series*

*S. Blair Kauffman* • *Law Librarian* • *Yale Law School*

You are invited to eavesdrop on conversations with former deans and faculty of the Yale Law School as they recall the people, ideas, and events that helped shape this institution during their tenure. These conversations were held under the auspices of the Lillian Goldman Law Library as part of its oral history project.

The Law School's oral history project draws on the special skills of one of its long-time librarians, Bonnie Collier, who conducts the interviews. Bonnie has an academic background in history and a special interest in oral history. She also has a great talent for allowing people to talk freely, and she approaches each of her subjects with a relaxed, open-ended style. Bonnie is a respected and well-liked member of the Law School community and is the perfect person to lead these interviews. The overall project goal is to capture the unfiltered memory of key figures in the Law School's history and make these conversations accessible to a wider audience.

Most of the conversations in this series were conducted in two to three separate interview sessions, sometimes spread out over several weeks. They typically took place in the comfort of the subject's office. Each was recorded and later transcribed. The transcriptions were copy-edited for errors and the occasional indecipherable mumblings deleted.

Otherwise, the oral history appearing on these pages reads very much as a direct recording of the actual conversations. Thus, some odd phrasing and occasional dropped clauses are inevitable and have been maintained in the interest of authenticity. Our hope is that readers will welcome the lack of intrusion between editor and end product and be forgiving of the twists, turns, and repetitions these conversations sometimes take.

Oral history is a complement to traditional written history and can be read for an enriched understanding of past events. Those readers who are familiar with Yale Law School will recognize the participants in these conversations and many of the personalities and events they mention.

Those who are less familiar with Yale Law School or who simply want a fuller understanding of its past are encouraged to read some of the published accounts, particularly the *History of the Yale Law School: The Tercentennial Lectures*, edited by Anthony T. Kronman (2004), which offers a broad account of this law school from the time of its founding through the late 20th century. Written history provides an analytical and interpretive narrative, while oral history provides a personal perspective. Both have important roles in helping shape our understanding of the past. The former offers the historian's sense of reality based on the sources drawn upon and the author's own perspective, as shaped by culture, place and time. Oral history can serve as a primary source for written history. It provides emotional depth that written history does not and offers the reader a first-hand account of the events and personalities.

The oral history project fits into a tradition of Yale Law Library publishing projects dating from the early 20th century. The Yale Law Library Publications is a now-defunct series inaugurated in 1935, in cooperation with the Yale University Press. Notably, four of the publications in this series provide a history of the Yale Law School from its founding to 1915. More recently, the library teamed with Yale University Press to launch the Yale Law Library Series in Legal History and Reference, with titles beginning in 2007. Additionally, the library's online publishing ventures include the Avalon Project, which presents digital documents relevant to the fields of law, history, economics, politics, diplomacy, and government, and the Yale Law School Legal Scholarship Repository, which presents digital images of student prize papers and scholarly articles authored by Yale Law School faculty.

Our goal with the oral history project is to assist future researchers with gaining a better understanding of Yale Law School's past by offering them direct access to the words of its deans and faculty – the policy makers and participants. Perhaps some future written history will draw on these conversations as a source for gaining a clearer understanding of Yale Law School's past.

**BORIS BITTKER (1916-2005)** was a member of the Yale Law School faculty from 1946 until his retirement in 1983 and was named Sterling Professor of Law in 1970. A graduate of Cornell (1938) and Yale Law School (1941), Bittker clerked for Judge Jerome Frank of the U.S. Court of Appeals. He was an attorney in the Lend Lease Administration in Washington, D.C. and received a purple heart for service during World War II.

Bittker published widely in the field of taxation, and among other important works, wrote *The Case for Black Reparations* (1973).



# *Boris Bittker*

*First Interview, June 5, 1996*

**BONNIE COLLIER:** Would you like to just say a few words of introduction?

**BORIS BITTKER:** Yes, I'm Boris Bittker, and my days at Yale Law School really began in my senior year at Cornell, from which I graduated in June 1938, because somewhat before graduation I came here to be interviewed in connection with my application for admission with the class entering in September of 1938.

I'm not sure that I was interviewed by Peyl Gulliver, who was on the faculty and to become fairly soon thereafter the dean, when Dean Charles E. Clark was nominated and then appointed to the Second Circuit Court of Appeals. That occurred during my first year here. So I was interviewed by Professor Gulliver, and I saw a little bit at the same time of Eugene Rostow, then one of the younger but already one of the impressive members of the faculty, because I knew a relative of his while I was at Cornell.

I was admitted and entered in September of 1938. The school was very different at that time than it is now because, to begin with, it was much smaller. The first year class consisted of only about 120 students and, while that number persisted for the three years that I was here, unlike Harvard which purged a good many of its students – said to be on average one-third of the first year class – that amounted to 360 students. You could add to that perhaps two or three Sterling Fellows, graduate students. So that there was nothing like the large graduate group of forty to fifty students and some special students that we now have.

The faculty was perhaps no more than fifteen to twenty in number at that time, and the administrative staff was even smaller relative to its present size. There was Arlene Hadley, the registrar, three or four faculty secretaries, as I remember, a couple of people in the library – that was

it. So that the school was really quite a small place that time, compared with what it is now.

The result was that students came to know each other quite early and more or less throughout their three years here. We also had many opportunities to see the faculty outside of class. Tea was served almost every afternoon, as I recall, weekdays anyway, in the large lounge on the first floor, and there were always a few faculty in attendance at that. So I would say that during my student years here, almost all students came to know moderately well a few members of the faculty. I was rather fortunate that I came to know half a dozen or more quite well and continued my acquaintance with some of them for many years thereafter.

We came – I'm speaking now of the first year class – we came very heavily from Ivy League schools at that time. A much smaller percentage of students came from state universities or from regional colleges and universities throughout the country. We were on the whole not nearly as intellectually prepared as students are these days, because college at that time was on the whole not terribly demanding. We probably had been subjected to a more homogeneous education in the sense that most of us had taken a good many of the same courses at whatever college we went to, regardless of the major, although there were a few unusual students in the class who had majored in the sciences or in some other field than English, economics, and history, which were the principal subjects at the time.

For almost all of us, our attendance at the Yale Law School, our introduction here, was to a culture very different from what we were used to in a college, where large lecture courses had generally prevailed with only a few seminars or smaller groups where there was any discussion or interplay between the student and the faculty member to speak of. Here we were suddenly taken very seriously in the classroom, seemingly anyway, in that our answers to questions and our discussion was immediately followed by comments or argument – sometimes a certain amount of ridicule by the faculty member. That was something that almost none of us were prepared for by our college training.

Moreover, our lives were really focused very heavily on the Law School, except on weekends when there were trips, mostly to women's colleges in the northeast, because at that time the Law School was almost wholly male, and there were very few women students in the graduate schools or elsewhere.

**BC:** Can I interrupt just for a minute to ask you, did most of the students live in the building? In the dorm?

**BB:** I would say about two-thirds did. Some couldn't afford to. I was one of those, but I lived very close on Lake Place. Another feature of student life at that time was that there were a number of sort of local boarding houses run generally by women, sometimes widows, who would take in half a dozen or a dozen students and serve meals to them for a prearranged amount per week. One could also eat in local restaurants and a few of the students ate in the half a dozen fraternities that still existed on the Yale campus.

**BC:** But meals were not served.

**BB:** Meals were not served. I'll mention that feature of student life in just a minute because it was affected by the returning veterans after World War II. The only meals served in the Law School were for ceremonial occasions, and the only equipment were steam tables. The food was cooked elsewhere and just held on steam tables to be served at large banquets and other events of that kind.

**BC:** About tea. You mentioned tea being served. Where was that?

**BB:** That was in the main lounge on the first floor. The other arrangement for meals was that some students, a few students rented a house, particularly the second or third year, six or eight of them, and would get a cook. In my third year, I was affluent enough just barely to join with two of my classmates. We rented an apartment on a street whose name I've forgotten now but near Lake Place, and we hired a cook who made lunch and dinner for the three of us, plus three of our classmates, and we shared expenses.

But we spent, all in all, a great deal of time together and the focus of our life was really the Law School. That meant that we lived, talked, and maybe even dreamt law most of the time.

Now, all this sounds very serious, and it was, and also to the outward eye it would have looked very formal. We wore jackets and ties almost invariably in class. It was almost unheard of to attend a class without wearing a jacket and tie, except for the couple of women, and they dressed in certainly a semi-formal way – not in jeans or khakis or sweaters. In addition, we invariably addressed faculty members as “Mr.” except for a few daring students, usually in the third year, who got on first name terms with the faculty. In the case of women students, it was “Miss.” I don’t think there were any “Mrs.” at that time and “Ms.” had not come into play.

So that someone looking at this environment would have thought it was quite formal, but in another sense it was more informal, I think, than the establishment is now because we came to know members of the faculty really quite well and mingled with them to a degree. I had meals sometimes with – not often, but certainly on more than one occasion – with a number of members of the faculty in their homes, visited occasionally. There were student-faculty baseball games, picnics and events of that kind, so that the formal sense that the outsider would get was somewhat contradicted by a very easy degree of interplay between the students and faculty.

We were very serious about our work. We were graded by numbers, and the rank in class depended on differences of a tenth of a percent maybe in grades. On the other hand, there was something of a lark involved in that, too. I remember one year – I think this happened a couple of times while I was here – but I remember in one particular year when, before the examinations were taken, there was a great party in the courtyard, and the first-year students were auctioned off to other students and to members of the faculty. The auction being geared to what the grades would be when the first-year grades came in a few weeks after that. A few people who were notable for their outstanding performance in class were

bought, so to speak, for fairly high bids, and then others were thrown together half a dozen or a dozen of miscellaneous students and the total pot that came in at the bidding would then be split up. I don't remember what the percentages were, but whoever held the winning ticket — that is the student who came out at the top of our class — got half the pot maybe, and then there were some more prizes.

So in that sense grades seemed extremely important and yet there was a fair amount of lightheartedness and a lot of joking about it also.

**BC:** Over the years, a comparison with the Law School at Harvard has always been a continuing theme. What was the perception among students about that comparison?

**BB:** Yes. Well, we got our views of Harvard, and the few other law schools that we sort of took account of that time generally in college, from instructors in the fields of political science, government, and economics and so on, and Harvard was overwhelmingly the great national school. It towered, so far as reputation was concerned, above all the other law schools, though Columbia and Yale were beginning to make some inroads. But after you named those three, the rest of the law schools in the country were a sort of homogenized blur in a way to us.

Now, I remember in an interview I had at Columbia where I went to see how much of a scholarship I could get there, because my going to law school was dependent on getting some financial aid, as well as doing some work. The dean who interviewed me, Dean Smith, said with great assurance and finality, “Harvard is the place to go if you want to know what the law used to be. Yale is the place to go if you want to know what the law maybe will become someday, but this is the place to go — that is, Columbia — if you want to know what the law is.” His view was that that was what would make a good lawyer, not Harvard.

Harvard also had a reputation, waning by then, but nevertheless still present — I'm speaking now of the period up to World War II when I graduated — of being a radical place, and that was almost solely based on the fact that Felix Frankfurter had been involved in criticizing the judicial proceedings in the *Sacco-Venzetti* case back in the early 1920s.

From a political point of view, by the time I was in college, the Harvard faculty, in fact, was really quite conservative. Yale was the place that had the firebrands, which meant nothing terribly radical, but nevertheless the group that was in sympathy with Franklin Roosevelt's New Deal.

We also had a sense of Harvard being a huge place. I don't remember the feeling that it was fearfully competitive, despite that well-known statement that a third of the first year class wouldn't be there to attend the second year. So that I don't think it was thought of as a cold and harsh place, as many students think of Harvard today, but it was thought of as a big place where you wouldn't get very much attention from the faculty unless you were in the chosen group on the *Harvard Law Review*, and it was thought of as conventional and somewhat formal, whereas Yale had the panache that came with the link with the New Deal and with the sense of coming and going between New Haven and Washington that that entailed, because a number of faculty members were drawn in one way or another into New Deal reforms.

Yale also had a reputation as the center of legal realism, although I have to say that to most of us that was a strain of legal thinking that didn't affect our lives very much, and it was somewhat vague. We knew that it meant you could be disrespectful to precedents, and that law had to be justified in terms of its serving social policy, and that gave a certain sense of immediacy and effervescence to Yale Law School, but on the whole I don't think it meant an awful lot to many of my classmates.

**BC:** You didn't have the sense that you were in the midst of a new theoretical framework?

**BB:** Well, there was some sense of that, but the only way we saw it worked out in class was a greater willingness to ask questions like, "What purpose does this law or interpretation serve?" That was welcome, I have to say, but we were not philosophers or philosophically inclined on the whole. We thought of the place as bubbling and effervescent, that's certainly true, and I suppose that was stimulated in some sense by the legal realist movement. We certainly were aware that these professors of ours were

worked up about something that they thought was terribly important, but I can't say that it was of overwhelming importance to us.

I think more important, at least in my own case — and I think with a fair number of other classmates — more important was that the link with the New Deal tended to give to the faculty here a sense of being in touch with important national developments in legal institutions and in laws. I don't know whether we thought that legal realism was essential to such developments as the Wagner Act in the labor field or the SEC and regulation of securities and the development of Social Security or not. We knew of those developments, those political developments, and with varying degrees, depending on the individual, they were important to us.

**BC:** Was it controversial? Were there students who maybe disagreed with that direction?

**BB:** I suppose there must have been some. I don't remember any — oh, there certainly were some conservative students who thought the New Deal was going too far, although it had a high degree of support, I think among students generally, even if they came from very conservative backgrounds and had been brought up to think of stability and government as very important. I think there was a certain excitement about it that appealed to all students, almost all students, and even those who might, for example, be very critical of labor unions might on the other hand have felt that Social Security was a desirable move or that regulation of securities was a desirable development.

**BC:** So it was a kind of compartmentalized view, it wasn't a whole ideology.

**BB:** I think that's probably right, yes.

**BC:** Was there a forum for controversy and dissent similar to the Wall?

**BB:** Nothing specifically like that. I don't remember any protests or petitions or letters posted or sent around. We certainly talked a lot among ourselves and with members of the faculty, and that was partly because a lot of these political developments with the New Deal reforms had a relationship to most of the subjects that we were hearing in the Law School.

A few members of my class had been associated with the America First isolationist movement in college. One was Potter Stewart, and another as I recall was Sarge Shriver. I'm a little less sure about him. That was already waning, the isolationist movement. It wanted us to keep out of foreign affairs, and it was gradually losing its appeal as Hitler made more clear his intention to conquer Europe. In some ways, students who were isolationists nevertheless came from backgrounds who thought very well of Great Britain, and the threat to Great Britain as posed by Germany certainly dealt another blow to the America First movement.

It was in our second year in law school, I believe, that the Selective Service Act required us to register, that is the male students, all except for one of our number who was below the age limit. I think it was eighteen and he was too young.

**BC:** There was someone under eighteen?

**BB:** He was too young to have to register, but I think all that rest of the male students — there were only two women students in our class — had to register and I certainly remember no movement to refuse to register. I don't think there were any conscientious objectors in our class. It's possible that there were one or two, but I don't remember any, and in any event, conscientious objectors generally registered, they just refused to serve if their number was called.

So that we weren't yet in the war. Pearl Harbor didn't occur until six months after we graduated, but the clouds were there. I do not remember, although there must have been, heated discussions about whether we should aid the allies, the French and the British, or whether we should take more active participation in the European war.

**BC:** I wonder if we could move back just a little bit and talk about your classes, first-year classes. Size, maybe a little bit about teaching style, the courses you took.

**BB:** Yes. I think, but don't remember for sure, that we were divided into sections of sixty each for our first-year classes, but I really don't remember. What I can say is that the stars of our first-year here, so far as faculty

was concerned, were Myres McDougal, who was a dazzling classroom teacher. Arthur Corbin, who was a benevolent, as it seemed to us, older gentlemen, although he was then certainly a lot younger than I am now. Harry Shulman, who was a master of the Socratic method in class and was able to force every one of us into a corner when we were called upon to recite, as we called it, to respond to questions. Dean Clark was a very demanding teacher, not very beloved because he was pretty blunt in his dealing with student shortcomings. We did not have Wesley Sturges in our first year. Underhill Moore, whom we had, was utterly baffling and terrifying to most of us. We dreaded being called upon by him, and it was generally thought that there was only one member of our class, Frank Pratt, who later became a student assistant to Underhill Moore, who understood what on earth Moore was driving at.

**BC:** Because he was unclear?

**BB:** He used terms of his own devising to some extent. He would fly into near apoplectic fits about decisions, and we couldn't understand why he thought the decision was so bad. He was focusing on tiny little issues in the commercial banking field. We didn't have any background for understanding what it was he was driving at, and he would respond with such fury at answers that were not to his liking, and almost all our answers fitted that form. The only thing I can say is that we consoled each other outside of class because no one, except Frank Pratt, as I say, as nearly as I can remember was ever able to shine in that class. We just hoped we would not be called on, but we knew that we were going to be unsuccessful in whatever we had to say.

**BC:** There was no way to see whether his objections were related to legal realism or any philosophical –

**BB:** No, he had a theory about the law, which to some extent I suppose it was an element of legal realism, although he stands off to one side in a way in that movement. He had a theory about how courts dealt with problems and in particular how they dealt with events that were, as he would put it, aberrational. Mostly, we really didn't know what it was he was driving at.

The members of the faculty who made the greatest impression on us were the ones I mentioned first. McDougal because he seemed to be able to explode and leave nothing remaining of any decision that seemed wrong to him, and he succeeded in persuading us that he was right on those exercises.

Harry Shulman was more the classical Socratic instructor in that he would put a question, seemingly one that had a fairly clear answer, but you would then find that your response to it simply opened another question and another and another, and you could begin to see where he was driving you, but you couldn't somehow find a way out of the chain.

Both McDougal and Shulman, though they were extremely demanding in the classroom, were rather genial in the way they treated us in the end. All of us knew that when called on we were going to be driven into a corner somehow, so you didn't feel that you were somehow personally inferior. You know, you just couldn't beat either one of them in the classroom.

We had Fleming James, who was a very good instructor, somewhat more personally anecdotal than the others. That may have been because he had actually practiced as a lawyer for some time before he joined the faculty. He'd been a trial lawyer for the New Haven Railroad and had a lot of trial experience, which he brought to bear in the classroom. So he was very well-liked.

I'm beginning to get mixed up about who we had in the first year and who later on, but I'd add Eugene Rostow. I think we had him in the second term of the first year. He had joined the faculty only a couple years before and was really a stunning teacher in the classroom and particularly impressive because he had had so little experience and was called upon to take over several courses, as I remember, at the very last minute. So we knew he was improvising, but he was a star.

Roscoe Steffen, whom we had, was a highly intelligent man, I think who had great difficulty in making himself clear, and we used to be puzzled by him. Arthur Corbin, who's the oldest of the group whom we

had as instructors, was a sort of foxy grandfather. Every time he caught one of us, he would chuckle. He had some amusing anecdotes, and the classroom was quite relaxed.

We also had Edwin Borchard. That was in the first-year class in public and constitutional law. Very uninspiring. His questions were uniformly to be answered with yes or no, and that meant that the question had to be pretty simple to begin with. It was a period of great ferment in constitutional law. Borchard was out of sympathy with all of that thought.

Franklin Roosevelt was a very poor president, indeed a dangerous man. His grievance principally was that Roosevelt was not an isolationist and did not believe in the Neutrality Act or was trying to get around the Neutrality Act in order to help the allies, France and Great Britain, particularly, once they got into war, and Borchard didn't want to see that. The Neutrality Act was a great achievement from his point of view, because it was part of a way of making the United States as independent as possible of foreign wars.

**BC:** I take it there wasn't much discussion, given the way the class was run.

**BB:** Virtually none. Virtually none. When I came back here to teach after World War II, I went in to pay a courtesy call on Borchard whom I'd known slightly when I was a student, and he still continued to teach for a year or two after World War II before he retired, and when I went into see him, he said, "Oh, Mr. Bittker, I wouldn't advise anybody to go into the teaching of law these days." I said, "Why is that, Mr. Borchard?" And he said, "Oh, the rule of law is dead," and then he went on to — mind you, this was after World War II — he went on to recite a litany of violations by Franklin Roosevelt of the neutrality movement and the legislation that Borchard himself believed in so strongly.

**BC:** Let me ask you what your fellow students' job expectations were while they were in law school.

**BB:** A good question. Let me back up a bit by saying that I think that our application forms for the Law School asked if we knew any — I'm almost certain that it asked if we knew any — lawyers, were related to

any lawyers or knew any lawyers, and I'm quite sure it asked, "What help can you expect in getting into practice?"

Now, turning to our expectations, I suppose when we came a lot of us thought we would go back to our hometowns or cities – I certainly did – and would find legal employment there, either with some law firm that we already were acquainted with or one that we could make a link with. Let me just drop a footnote here to say that one of the advantages that the Harvard Law School had over Yale at that time, it used to be said, was that there were Harvard graduates in leading law firms all over the United States, whereas Yale had only recently ten or fifteen years earlier come out of the state where it was primarily a training ground for Connecticut lawyers. So there were very few graduates of Yale Law School scattered around the United States at that time, as there were Harvard graduates.

So a lot of us came thinking we would go back to our hometowns, and of course a fair number of my classmates came from big cities. As time went on at school, we began to see the possibilities for getting into large city practice – that meant primarily New York City with the large corporate law firms, and that was because a few of the faculty had practiced there but also because we became aware that they were deeply involved in lots of extremely interesting and cutting-edge issues in the development of the law. So that there was a growing tendency to think about big cities, but that meant mainly New York, although for students from the Midwest it would mean Chicago and from the south it could mean New Orleans or Atlanta.

Now there was virtually no summer employment for law students at that time in law firms. There may have been a few of us, a few of my classmates, who worked for law firms, but I can't remember any. A couple of us worked for government agencies. That was true in my case.

And there was no movement toward employment, except for I suppose students who were closely associated either by relationships or other factors with law firms in their home cities or town. There was almost no

movement until our third year, and then we would start going around for interviews. Law firms did not come to the school to interview. We went to where they were and that meant mainly going to New York City. If you were interested in working in your hometown, of course, you had direct ways of getting to those firms.

I can't think of many of our classmates who thought they would like to move to a big city substantially away from home, but if you thought about that, you'd probably deal with the firms by correspondence and maybe at Christmas time by train trip because commercial air flight was not a common event at that time. But there were trips to New York, a few probably to Philadelphia and Boston, and the process was one of having an initial interview and then being called back if the firm was interested in you. Maybe being called back two or three times.

One point of historical note that I might mention is that in our senior year, in my year and I think this has been true for several years, Professor Gulliver, by then Dean Gulliver, held a meeting for the Jewish students in the Law School who were interested in going to New York City to discuss what their prospects would be. This consisted mainly of indicating that with a couple of exceptions, the Kravath firm, and Sullivan and Cromwell, and a few other big New York firms handling corporate business simply did not hire Jewish students or almost never did. That may have led to some resentment by some of my Jewish classmates, but in my own case, I thought I was just learning about the facts of life, and it wasn't any surprise, and it really seemed to be a useful and helpful gesture so that one could save time.

**BC:** Could you venture a guess on the number of Jewish students in your class?

**BB:** Probably about fifteen, maybe a few more than that. There were some larger Jewish firms and a few firms of mixed Jewish and Christian origin. I don't think there was anything like this for the Catholic students, although I'm sure there were some New York firms that were not particularly likely to hire Catholic students at that time, or students from Italian descent, perhaps some others.

**BC:** How about the two women, do you have any recollection of where they went?

**BB:** Well, that was a special case. Virtually no big firms hired women, but that barrier was just beginning to crack. One of my classmates, Shirley Adelson, got into the Prosteau firm. She was Jewish, but she was the first women to be hired there. Barbara Cox, who I think was in my class but maybe she was a class behind, was hired by Hughes, Hubbard and Ewing, and she was the first women that they had ever hired. They used to get when they went to other firms – when they went to these firms, because they were determined that they were going to break the barrier, or at least they were going to try to break the barrier – they got a variety of excuses. The clients wouldn't tolerate it. I remember one of them, I can't remember whether it was Shirley or Barbara, told me that they had been told by a New York firm, and maybe by several, that they couldn't hire a women, partly because their clients wouldn't accept it, but partly also because they had no bathroom facilities. When a student, either Barbara or Shirley, said, "But you have female secretaries here," the answer was, "Well, a lawyer certainly couldn't use the same bathroom as secretaries."

**BC:** That's a Catch 22.

**BB:** That limitation was still a serious obstacle after World War II as well, and I don't know just when it began to break down in earnest. Probably not for ten or fifteen years, I think, and there were probably holdouts even after that.

I cannot remember any black students in school. There weren't any in my class. I can't remember for sure whether there were any in the second-or third-year class, but I don't think there were.

**BC:** Let me ask about the New Deal. My sense of the Yale Law School during that period is that it became sort a public policy law school.

**BB:** Yes.

**BC:** Is that –

**BB:** Well, yes I came here in 1938. The link with the New Deal of course started in 1932 or 1933, and there were people who came and went dur-

ing that period from 1933 to 1938 when I arrived. William O. Douglas had already left the school. Thurman Arnold, I think, became head of the trust division of the Justice Department during my first year here. I'm not quite certain about that, but I think that's when it occurred. He had worked in Washington before that, at least part-time.

Abe Fortas, I'm not sure whether he was actually on the faculty here at one time, but he certainly was talked about as a possible member of the faculty, had gone to Washington earlier. Wesley Sturges had been in and out of the government. Sometimes these faculty members would have just worked as consultants. Sometimes they actually took a term or a year off, but there was a general flow back and forth. Then also some of the people who worked in Washington would occasionally be here to lecture. So we had a very lively sense of what was going on in Washington, and we felt that the Yale Law School was important.

Of course, there were lots of jokes about Frankfurter's hot dogs, meaning his bright students, and there were many of them in government during that period in the New Deal, and there were many more Harvard people than Yale because the total number of graduates was a lot smaller.

**BC:** Did your student colleagues, though, look to Washington as a place to go for work?

**BB:** For employment, not very much because we were graduating in 1941, in June of 1941. We were already registered under the draft. Most of us thought we'd be in the military service before too long. Some went to Washington, not to make careers of it, but to be there just to spend a year or two before they went into military service.

I can't say that in my class any substantial number thought of government service as a career. It certainly was thought of as a possibility for a couple of years, something interesting and lively to do leading to expertise in a field that might be useful in practice later on, but public service was not on the whole a career we thought of. To the best of my recollection, there was only one member of our class who contemplated

an academic career and that was not me. It was George Braden in our class, and George did actually join the faculty here at the same time I did in 1946, but did not stay. I don't think of anybody else in the class who seriously thought about an academic career, and it was really not something that was likely to be an aspiration because, in the first place, there were fewer law schools then. The size of the law schools was smaller. The way one got to one of the leading schools like Harvard or Yale or Columbia or even some of the others was by serving an apprenticeship generally speaking at some provincial school. Wesley Sturges, I think, had taught at Kentucky or maybe it was West Virginia. Thurman Arnold I think had started at West Virginia. After World War II, Fowler Harper had begun his career, I think, at North Dakota. So that possibility of gradually working your way up the ladder and not being at all sure that you wouldn't be left in North Dakota for the rest of your life, would have discouraged us from thinking about an academic career. It simply was not something that figured in our thinking.

**BC:** Now, getting back to you, you went away for five years and then came back. What were those five years?

**BB:** I did not have a job until just about spring vacation in the third year. That was not terribly unusual, some of these jobs didn't gel until just before graduation or even during the summer after graduation. While I was in this state of limbo, Jerome Frank, who was chairman of the Securities Exchange Commission, was nominated by President Roosevelt to serve on the Second Circuit Court of Appeals. That happened in the spring of 1941.

Frank called his old friend Fred Rodell, who was here in the faculty and said, "I'm going to need a law clerk, do you have any ideas or anybody you could suggest?" And Rodell asked me if I'd be interested and I said, "Yes, I would." So I went down to see Frank within a couple of days and such was the power of Franklin Roosevelt in those days, vis-à-vis Congress, that Frank, whom I saw at his office at the SEC said to me, I think it was on a Friday, "Look, I'd like to hire you as my law clerk. I

think I'm going to be confirmed on Tuesday and therefore I'd like to have you start right away. Could you do that?" That was appealing enough to me so that I said yes, even though I knew what that meant was that I'd be working in New York City, and I'd have to somehow bone up on my courses – miss classes and then bone up on my courses and come back up here to take my final exams.

**BC:** That was in March?

**BB:** This was in March or early April. I think it was in March, but I was so happy to get a job, particularly one that looked as if it would be so interesting, that I took the job, and I stayed with Frank in effect for about fifteen months because I started before my graduation. I was not yet about to be drafted. I had a fairly high number in the draft lottery system, and my local draft board in Rochester was not hard pressed for people. My father died in the summer just after I graduated, so I was for a time the sole support of my mother, and so I was deferred while I was with Frank. I knew I was going to probably have another year before I'd be in the service, so I looked around at the Lend Lease Administration, which was heavily dominated by Yale people – it had McDougal and Rostow and Oscar Cox who was one of our graduates, and Lloyd Cutler, among others. So I worked for the Lend Lease Administration for about a year until I was drafted, which was in the summer of 1943.

**BC:** Could you say something about Jerome Frank?

**BB:** Well, it was an extraordinary experience. Frank was, I think, the only genius I've even known in the sense of a man with an extraordinarily rapid capacity to absorb material and reach conclusions about it, and to criticize and dig into material, and in the sense of also being imaginative and creative. That was first. Secondly, he was extremely given to discussion. He loved to talk over everything and at the SEC he had a whole staff of people to listen to and argue with him, and I was now the elected person. Of course, he argued with the other judges.

**BC:** You were his only clerk?

**BB:** There was just one law clerk in the federal system in those days,

so I was his law clerk and he wanted to discuss everything with me. In addition, he wanted me and had me attend the oral arguments so that he could start arguing about the case as soon as it had been entrusted to him. So that right after the oral argument he and I would go over the cases. He'd tell me what he was thinking, and what he wanted me to do more research on, and what he wanted me to study and so on, sometimes his tentative judgment.

He was marvelous at taking one seriously, so that I had just a superb experience with Frank. We also became very close friends and remained so for the rest of his life and indeed, I was his financial advisor for his widow. Not just to his widow, but then to the housekeeper who was the sole survivor of the family, to whom his widow left their home and what little property she had. So that was the beginning of a very long, very close relationship.

The work at the Lend Lease Administration was marvelously stimulating. That was partly because Oscar Cox, who was the general counsel of the Lend Lease Administration, was Harry Hopkins' fair-haired boy, and so we used to get legal problems from all over the government that were sent to us by Harry Hopkins, even if they had nothing at all to do with Lend Lease. So I had a marvelous experience there.

Then I was in military service. When I was discharged in the summer of 1945 – when I was about to be discharged, rather, I got letters from Walton Hamilton, whom I'd become very close to as a student at the Law School and Fred Rodell, whom I knew fairly well also, saying that the school was about to make some appointments to fill vacancies that had occurred during the war as people retired or died, or left teaching, and would I be interested. I said I would be, although it was something I'd never thought of before, and that I was willing to try it for a year to see how it went, but I didn't have any expectation of staying longer.

I worked in Washington. Well, I was then appointed as an assistant professor. I got out of military service a little early because I was wounded in action and had a physical disability, so that I got out before the great flood of veterans, and they didn't yet need me here to teach because the

enrollment was still tiny. So I worked in Washington with the Alien Property Custodian for about a year, about nine months actually, until I came here to start teaching in the summer of 1946.

**BC:** Let's talk about that. Your impressions coming back in 1946, and how you felt being on the faculty, what the faculty was like then.

**BB:** Let me start by saying I think there were only fifteen regular members of the faculty when six of us joined. There were six of us: Ralph Brown, George Braden, who, I mentioned earlier, Dave Haber, who later went to Rutgers, Addison Mueller and Grant Gilmore. So six of us were taken on in the summer of 1946. The school had a summer school for returning veterans who wanted to speed up their graduation, and we had it also in the summer of 1947.

I started in the summer of 1946, with this group of five others, we sort of made up a kind of coalition or a consensus or a cabal, or a conspiracy vis-à-vis the other fifteen members of the faculty. I don't mean it was hostile, but we had our own ideas about how the school ought to be run and they began to take shape.

**BC:** That's quite a large number of new people.

**BB:** It was an extremely large number, particularly because a few of the old-timers like Borchard were about to retire. Now, there were a few older ones taken on shortly thereafter, notably Fowler Harper and Tom Emerson, but the six of us made sort of an independent group.

Now, one of our characteristics pretty much in common was that we really had no independent thoughts about how we ought to teach. I think all of us felt that we ought to do pretty much what our professors had done, so we thought that the Socratic method was probably the way we should teach. We didn't know any other way. I mean we knew you could lecture, but that wasn't done around here. So the Socratic method of teaching was something we adopted almost automatically.

None of us had any overarching theories about the subjects that we were designated to teach. We had some choice, but also some elbowing, pushing by the dean, and the subjects we taught our first couple of years. We were not experts in those subjects, any of us. Unlike faculty hiring

today, when prospects are brought here to deliver a paper and engage in conversation about how they think law ought to be taught, we were not subjected to any of that. We were just picked because we had made favorable impressions on the faculty, who I suppose had varying criteria among them about what made a good teacher.

But we certainly were on no crusade and we fumbled, and I know I taught corporations for two years, giving a great deal of attention to a particular subject called *de facto* corporations, defectively organized corporations because there was a chapter in a case book that I used all about those cases, and they seemed sort of interesting... but I spent a great deal of time in class on them before I learned from friends in practice that this was a subject of no practical interest whatsoever, because none of the problems that arose in these few cases, in the first chapter of the book, were ever encountered in actual practice.

So I think we were fumbling really in the subjects that we were engaged in. We began to develop views about the school. We were critical of some of the older people. We wanted to see more younger ones added to the faculty.

**BC:** How did some of that disagreement and discord manifest itself?

**BB:** Well, the six of us used to meet together quite a bit and talk about the school, as we began to develop ideas. We were really just responding to the problems that we saw as we started teaching and that ranged from, at one end, the fact that we didn't have much choice about what we were going to teach and we're subordinate, so to speak, to the other members of the faculty, to feelings about how responsibility for hours of teaching was fixed, to how new people would be selected and promoted and so on.

I cannot now remember particularly some of these issues that were quite contentious among us as that time, but I do know that we brought Harry Shulman, who became dean as soon as Wesley Sturges stepped down, into our discussions a couple of times, and then he began to admonish us that we should not think of ourselves as a separate law faculty, and

that we should not give the other members of the faculty the sense that we were engaging in conspiracy to overthrow them.

As I say, I'm embarrassed that I cannot now recall what those issues were. It was forty years ago, that's some justification I suppose for failing to remember them.

**BC:** Well, I think it's a good thing. Maybe it means that some of the issues of today will be forgotten, too. Let's talk about tenure.

**BB:** Well, looking at it from our point of view, we were still in the publish or perish stage. Not completely because we knew that there were possibilities of getting promoted to tenure, even if you didn't publish anything, but that was a very difficult way of attaining tenure, and writing was what was expected of us. I think we reacted variously to that.

I was rather glad to have some pressure to do some writing, and enjoyed the research and writing that I did do, and did not feel that I was engaged in a useless or tedious or an activity without a future solely to get promoted. I found the writing quite interesting and I think that was also true of Grant Gilmore and one or two others, but some had a hard time writing. We used to discuss with each other what we thought our fate was going to be.

Tenure was also known to be affected to some extent by whether other schools were interested in you, and I was able to bring the issue of tenure to a head somewhat earlier than it would have been otherwise, because I received an offer from the University of Pennsylvania for an appointment as an associate professor with the promise that I'd be made a full professor in a year or two, as long as I didn't make some dreadful error in my behavior while I was there. So that enabled me to bring the subject up a little earlier, and I think there may have been one or two other instances of that.

So that was how we viewed tenure. We knew that we were there on term appointments, and we did consider the possibility that they might not be renewed. In the case of a couple of us in that group of six, it became known to them that they had relatively little chance of getting a tenured appointment and they moved on to other schools.

Now, so far as tenure for other people was concerned, I imagine you maybe want me to talk about the big battle over Vern Countryman at the school.

**BC:** Yes.

**BB:** Well, Vern was one of our outstanding classroom performers. He was a very demanding teacher in the classroom and was sometimes known as “Nails.” The students felt that, but they did not dislike him for it. He was regarded as a very demanding teacher but one who made you perform at your best. So he was a very popular teacher.

His writing was fairly limited, and the main product was a small book on a committee of the State of Washington or Oregon – I guess it was Washington – that was a sort of small copy of the House un-American Activities Committee in Congress. It was a good job, but some people felt it to be more journalistic than legal. Nevertheless, the faculty voted overwhelmingly to recommend him for tenure. He was then an associate professor.

In those days, recommendations from the law faculty were not as final as they are now. They went to the president, but the fact that the faculty had voted was not thought to be conclusive. It was generally thought there was still some room for judgment on the part of the president or the provost, or in the case of Yale College, by the executive committee, about whether a tenured post should be recommended to the Yale Corporation, which had to vote on it.

In Vern’s case, Wesley Sturges, who was dean when the promotion was voted, felt that there was going to be a problem in getting his appointment approved, and the faculty had voted tenured appointments for a number of others at the same time, so he decided to send some of those over to the president’s office, holding back on Vern until he got the easy ones, so to speak, through and then he was going to tackle Vern.

Now, the problem with Vern’s tenure appointment was probably twofold. There was some question about the weight and quality of the scholarship, but there were also complaints that he was a radical who

was shooting off his mouth too much to the detriment of the school's reputation, coming from some alumni. I think it's some combination of those that led Sturges to hold off sending Vern's appointment over.

This was in Wesley's last year as dean and he was succeeded by Harry Shulman. Shulman sent the recommendation over to the president without any comment apparently from himself, and the president asked him what he thought about it. Now, Shulman had been away at the time the faculty had voted on tenure, and he told the president that he had never made a judgment and the president said, "I want your judgment about it," and Harry told the president that he would not personally have voted for it, but it was the vote of the faculty, and it was now up to the president. That led Griswold, who was the president, to announce that he wasn't going to send this to the Corporation, but that he had no objection to a renewal of Countryman's appointment as associate professor, leaving open the question of tenure to be decided on the basis of what was done during a proposed continuing period.

Well, Vern wasn't willing to wait, and the upshot was that we had a meeting at which Griswold came over to explain to the faculty why he took the position he did. One of his arguments, the main argument really, was that in the department that he was in at Yale College, history, almost nobody ever got tenure without having published a couple of books, and books with strong reviews from respected scholars in the same field at other universities, and it just seemed to him that the Law School moved people up much too fast, both in point of view of age and in point of view of compensation and point of view of published work.

Well, we had a big argument at the meeting. The salary scale, it was argued and correctly, was fixed to a large extent by competition. A professor of Greek has no place to go if he didn't get tenure, but lawyers could go into practice, and we were all getting, even in those days, significantly less than we would have gotten in private law practice. Probably as much as we would have gotten in government.

**BC:** But more than other faculty.

**BB:** Oh, yes, without any question. Oh, without any question we were paid more. I think Griswold said, “How can I justify a salary” – he wasn’t talking solely about Vern, but – “how can I justify a salary of such and such” – I forget the amount – “when” – and he then named a very distinguished professor of English literature, I think, or history who was getting, after ten years as a full professor, six thousand dollars less than this youngster had been getting. So it was very much on his mind and the volume of work was a factor. Shulman then tried to get Vern to stay on.

**BC:** Was it clear to Countryman and to the law faculty that Shulman had not recommended tenure?

**BB:** I think Harry told us that at some point. I can’t remember just when, but yes, we knew it. Harry tried to get Vern to stay on. I thought that if Vern had stayed he would have gotten tenure in another year or two, and I told him that at the time, but he wasn’t willing to and he left, went into practice for a couple years, and then became dean of the University of New Mexico Law School when he went back into teaching.

There were, of course, people who said it was solely political. I think to know whether it was or wasn’t you have to be able to psychoanalyze both Shulman and Griswold, and I don’t know where you’d come out on that.

**BC:** Let me just pick up on the little bit you said about the president of the university. What’s your sense of the relationship between the Law School then and Woodbridge Hall?

**BB:** Let me back up to the time I was a student. I didn’t know much about it at that time, but I soon learned after I joined the faculty that throughout the 1930s, during most of which time Charlie Clark was dean, there was friction, tension, and sometimes animosity between the Law School and what you could call generally Woodbridge Hall and the Corporation. This was partly because the Yale Corporation had several members who were Yale College but Harvard Law School graduates. Their view was first that the Law School was costing Yale far too much money, that it had a

faculty that was almost as large as the Harvard faculty, which has three times as many students. I imagine the Law School was making money even then for the university, but it was certainly nothing like the cash cow that the Harvard Law School was for Harvard. So they felt it was a very expensive institution – the members of the Corporation felt it was a very expensive institution and it was, comparatively speaking, relative to Harvard.

**BC:** Compared to Harvard, but maybe not compared to the Medical School or the Graduate School.

**BB:** That isn't what we compared ourselves with in those days. Secondly, that it had a generally Democratic and left-of-center and even radical tone about it. There were petitions that members of the faculty signed or speeches they made, or were just political, that they participated with the New Deal in drafting this legislation or that. I think there also may have already been a feeling that salaries were unduly high compared with the rest of the university.

The Yale Corporation and the president of the university apparently got their views – I mean the rest of the Corporation would get their views – from these lawyers, several of them on the Corporation and a couple of presidents, Angell and Seymour, were pretty conservative figures, and they were not comfortable with Charlie Clark's approach. Charlie Clark was actually a Republican and a judge in Woodbridge, a post he could hold only because he was a Republican, but he was known to be active in law reform.

So there was constant tension there between the Law School and the president and the Corporation. I don't know what particular issues it would come into crisis about, but probably financial matters and so on.

Now, after World War II that continued, as least for a while, and although Griswold was in a position to know somewhat more about the Law School – one or two of his courses in the history department had been listed in the Law School and there was some cross-fertilization of students – he was somewhat of that old school. I remember when Sturges announced his retirement and a search committee was appointed

for a new dean, I was the junior on it, and when we met with Griswold, I plucked up my courage and told Griswold that I thought before we could get down to business successfully about the selection of a dean, that it would be desirable for him to know more about the Law School faculty than he did, and I urged him to make a real effort to come to know some of these people whom he didn't know too well. I have to say Griswold went about it quite seriously. I think he invited every member of the Law School faculty to come over and talk with him. He had several conversations with Tom Emerson and expressed himself as in substantial disagreement with a lot of Tom's political positions, but having no question about Tom's competence as a teacher and loyalty to the United States and deep sense and so on. I think Tom felt he got a good hearing from Griswold, even though they were way apart on political issues.

So that things began to change very rapidly with Griswold in this respect. That was also helped out by the fact that Griswold was a very good friend of Gene Rostow, and Gene cultivated Griswold when he became dean, and it wasn't very long before we became almost the darling of Woodbridge Hall, that is the school whose reputation was growing constantly, great demand for student admissions, a faculty that was highly respected and recognized as a good school elsewhere. So that changed, but it was at a very low ebb at the time of the Countryman case.

**BC:** Now, the dean search committee.

**BB:** Yes.

**BC:** Can you talk a little bit about that?

**BB:** Well, our first meeting with Griswold – first of all, Myres McDougal was chairman. I think Fleming James and I were the only two other members. I think it was Fleming, but I'm not absolutely sure. At any rate, there were only three of us. At our very first meeting, Griswold began by saying that he had great admiration for Gene Rostow and that he would – no, wait a minute. I'm thinking now of the search committee that was appointed after Shulman died. I have to back up. I was not on the committee that picked Shulman after Sturges' retirement, and I

forgot about that because Shulman served only about eight months. He was sick within three or four months of taking office, and we used to have some of the faculty meetings at his home because he wasn't up to coming to the school. So that terminated very quickly.

## *Second Interview, June 7, 1996*

**BORIS BITTKER:** You asked me to comment about the graduate committee at the school and its work, particularly during the period when I was involved, and that was early in Louis Pollak's deanship. By way of background, let me say that during Eugene Rostow's deanship, the graduate committee was charged with administering essentially two programs. One was for young men and women who were interested in or already in law teaching who, by and large, had gone to regional law schools and wanted some time, normally a year here, to get the LL.M degree and to get what informally went along with it. That is an opportunity to make themselves acquainted with members of the faculty here who might be able to sponsor them in their search for jobs in law teaching, or in their efforts to improve their status by moving, perhaps from the school where they were teaching to one that they thought would be more stimulating and prestigious.

Our role, that is Yale Law School's role, as a training ground for law teachers expanded very substantially during that period. Previously, Harvard had been that main place where aspiring law teachers went for graduate work, to a lesser degree a few other schools, but Yale began to move into this area very substantially. We had great success in attracting graduate students here in helping them to improve their lot after they left here, owing in very large measure to Myres McDougal's very wide acquaintanceship in the law school world, to the admiration in which he was held, especially to his connections with southern law schools, having come from Mississippi and his tireless promotional efforts of those students, almost all American in origin.

Along with that great expansion of our training of prospective teachers came a similar effort, which was novel in those days, of training people for law teaching in foreign countries. We began to attract large numbers of foreign students as this program was promoted by Gene Rostow and Myres McDougal, partly because they were very effective in attracting funds from American foundations to provide fellowships, and also because

of their great faith in the prospect of training law teachers who would go back to their own countries and make a real dent on legal education and, in turn, and in time also, make a dent on political developments in their own countries. We began to attract students, particularly from the developing countries of Asia and then somewhat later of Africa.

Initially we had very few foreign graduate students from the developed countries of Europe or from Great Britain because they either went to graduate institutions in their own countries or didn't need the credentials that we were able to offer to move ahead in their own countries. But it was otherwise with the Asian and Filipino and African students. Among other things, they didn't have the source of funds to study outside their own countries. Secondly, as a result of America's longevity as one of the two great superpowers after World War II, many of them wanted to come here, far more than they wanted to go to the Soviet Union for training, but they couldn't afford it without the financial aid, and that was not available at very many American schools, but it was available on a large level here.

Now, in the selection of foreign graduate students the school was faced with very great difficulties of determining suitability and even of their ability to understand and speak and write English properly. There were tests administered abroad, but the results were often not very promising, and very high grades didn't indicate necessarily that the applicant could handle the work here. So there was a great problem selecting people.

In addition, there was in some countries — this was especially true I would say in my experience of the Philippines and India — of endorsing people related by marriage or social relationships to the people writing the letters of recommendation, and it was hard, therefore, to be sure that someone who was extravagantly praised in letters from people — very often of substantial standing themselves — it was hard to judge whether those letters were reliable.

The result was that the foreign graduate students were a very mixed bag and included some who had great difficulties with English, and

others who turned out to be not nearly as promising as the credentials that they offered at the time admission was under consideration seemed to suggest.

There was also in both McDougal's and Rostow's philosophy, with respect to the program, a devotion to the proposition that one of the benefits of the program would be that we would, to put it very bluntly, be building up a core of overseas people in law and also in political life, either directly or with influence on political life through their students and associates, who would be strongly pro-American and would champion the American view during the increasingly exacerbated Cold War.

Looking at the program here, many of the members of the faculty – I was certainly one of them – were increasingly concerned because the dissertations of which the JSD was based seemed to be sometimes superficial, sometimes an excessive parroting of McDougal's views of international law and jurisprudence, and also because a number of the foreign students seemed to hang on here year after year, not just for the three years normally thought of as necessary for the JSD degree, but four, five, six, seven, eight years with money being somehow derived from foundations usually or sometimes from other sources, so that they could manage to stay on, even though there appeared to be very little evidence that they were making any headway with their dissertations.

The dissatisfaction was relatively sporadic, never very well-organized, but it grew as time went on. As I say, I was one of the critics, as was my very close friend and associate, Grant Gilmore, but there were a number of others as well.

Dean Rostow, however, for a mixture of reasons – some good, some less so – was extremely enthusiastic about the program, and it was true that some of our graduates moved up the ladder of academic and political success at home very rapidly, and some of them did prove to be very good friends of the United States, to the extent that they had some influence on the policies of their countries.

However, when the deanship changed and the torch was passed from Rostow to Pollak, there developed some widespread feeling that some

change was in order, and I was designated as chairman of the graduate committee, with the sort of tacit understanding, at least in expectation, that I would have several objectives. One was to reduce the size of the program substantially by weeding out students who seemed to hang on year after year with little visible progress; by being more strict in the selection of students, a very difficult goal which I didn't feel I was able to make any headway with because of the great difficulty of weighing the reliability of the letters of recommendation on which we had to rely so heavily. Another objective was to improve the quality of the dissertations, which meant starting early and limiting severely the number of students who would be allowed to move from the LL.M track to the JSD track, and then by monitoring their progress very much.

It was a task that I thought needed doing, but it was difficult and sometimes distasteful because I found it necessary to discourage some fair number of students who were, from a personal point of view, very attractive and sometimes had very good reasons for not wanting to go back to their own country. I don't mean to say that we sent back political refugees, but there certainly were a number of students who felt they had very little prospect of moving ahead in their own countries and were desperate to stay on in the United States in any capacity whatsoever.

Then there was the other side of the coin, which was the job of continuing to maintain the program for American graduate students. That had never come under such severe criticism, although there was a feeling that it was a little too large, and we weren't strict enough in our choice of students. It was sort of jocularly said that every one of our graduates has been in the past in McDougal's view "the best person who has ever decided to enter law teaching." I found it a little difficult to maintain the same degree of enthusiasm for everybody that McDougal did. Still, I worked hard at helping get our American graduate students placed, and I became, if I say so myself, reasonably good at it, although my own tactic was very different. I simply couldn't muster the same degree of unqualified enthusiasm, but I did try to find the best that there was in

each of our students and I tried to push it hard. I pressed a lot of buttons, although I didn't have the following anywhere in the country that Mac had when he was chairman before me, particularly with respect to the southern states.

I might just sort of add to this that one of the questions I used to get from deans of others schools when I recommended one of our people for appointment was, "Now, tell me, Boris, is this someone who you would push for appointment in your own faculty?" Now, Mac would have had no difficulty answering that question: "Yes, of course I would." I don't suggest there was any deceit there because the people who received his answers knew perfectly well that he might be exaggerating, but I somehow couldn't do it. My tactic was to guffaw when asked that question and to say to the dean, "Now, Jim, you know what prima donnas my colleagues are. I wouldn't have the foggiest notion of whether you or I would be appointed to the Yale faculty, and so don't ask me to make a judgment about somebody else." I found that went down reasonably well. It was clear that the dean of XYZ law school did not really expect that the person he was considering was sure to get an appointment at Yale, but on the other hand, he certainly didn't want to hear an answer like, "Why we wouldn't in a hundred years appoint somebody like this."

So I kept at this job, I guess — well, the records would show. It seems to me like an awfully long time. Maybe it was only five or six or seven years and, although I found the early couple of years very trying and distasteful with respect to the foreign students because I was in the process of wielding the ax so frequently, once we got the number down to a much more manageable group, I took a good deal of interest in and pleasure in this development. I think by the time I had really gotten going on the program the total number of foreign graduate students in an average year had probably declined from about fifty to twenty-five or so.

With respect to the American students, I came to enjoy quite thoroughly the process of trying to get them placed at what was then known as the "meat market." This was before the American Association of Law

Schools developed a separate and chronologically distinct period of time for placing people in law teaching. In my day it was done during the course of the three-day annual meeting of the American Association of Law Schools, and so it was a rather hectic period, but as I say I came to enjoy that quite a bit, very much indeed.

Now, I also told you that I would talk about another subject, this is a more touchy one and I hope that great discretion will be exercised in describing it. During the latter part of Gene Rostow's tenure as dean — he was dean for ten years — Myres McDougal received an offer from Cornell Law School of an appointment which was coupled with assurances that a very substantial institute, jurisprudential and also related to international law, would be created at Cornell if he would agree to come there. The school, as we were informed, spoke of financing two other full professorships that would be filled by people to be selected by McDougal. Apparently it was thought that the faculty there was so eager to get Mac for this program that they would accept his nominees for professorship without much argument, and it was to include financing of research fellows and assistants and so on, on a very elaborate scale.

Now here at Yale, Mac did have sources of funds from foundations that were very sympathetic to his approach to law that enabled him to have and keep on some research assistants and associates for substantial periods of time, in effect more or less at his wish. This had aroused some discontent on the part of some members of the faculty here, but it was not an exacerbated issue, just one that created some annoyance and criticism because similar funds were not available to other members of the faculty.

Mac understandably talked with Gene about the offer from Cornell, and Gene announced that he was going to do everything possible to match it. I don't mean by that to say that Mac had said he would leave unless it was matched. Indeed, Mac told me sometime later that he never really seriously entertained the idea of leaving, and that's quite understandable to me, because Yale had been Mac's home, and he was so devoted to it

that it was very hard to imagine that he would want to go to another school, even with great attractions of that kind. However, Gene pushed very hard for matching the proposal, and the two professorships under Gene's plan were to be filled by two people: one an American at another law school and the other by a law professor in the Philippines who held our *JSD* and who was one of our most outstanding *JSD* candidates at the time he was here. He had gone out into a fine career when he returned to the Philippines.

A number of us, including particularly Grant Gilmore, Charles Black, and myself were very much opposed to the two professorships. We didn't object to increasing the size of the faculty, although I think we would have had questions if the issue had been put to us directly about whether we needed two more professors of international law on the faculty at that time, but all three of us knew both of the candidates and didn't think either one was qualified for a professorship here. There were a number of other members of the faculty who felt the same way.

**BONNIE COLLIER:** And so there was argument?

**BB:** The matter was argued up and down, mostly in the corridors during most of the school year. I say mostly in the corridors because Gene never attempted to bring either of the professorships to a vote, knowing that there would be considerable opposition, and I think not sure that he would be able to get a majority of the faculty.

There were a variety of compromise proposals that were considered from time to time, and people who felt like Grant and Charlie and me about the two people in question, began to move over to the dean's side, as the proposals became less drastic. I cannot now remember all the many variations, but they were considerable and, as time went on, it became more and more clear that the three of us were, so to speak, diehards and that others felt that one or more of the various compromises that were being suggested ought to be accepted.

Finally, sometime in the spring, one of the younger members of the faculty came to me early one morning and said that he had had a

meeting the day before with a number of people who were in the middle on this issue and that they had developed a proposal under which, as I now recall – I’m not sure of the details – one of the two people was to be named a research associate at the school with an appointment for a limited number of years, but with an understanding that until Mac’s retirement the term would be renewed, and that the other person would get a somewhat lesser appointment and with far less assurance of staying here.

**BC:** A big difference from where this started...

**BB:** Well, that of course was a far, far cry from the original proposal that these two people were to be full professors, because in effect the idea that they would be professors at any level – assistant, associate or full – was being abandoned, and they were to be made sort of adjuncts to Mac to assist him with his writing and research and perhaps to have a little responsibility for teaching, but nothing very much. That seemed to me a virtual abandonment of the original proposal, and I told the person who spoke with me that if it was up to me – oh, excuse me, I forgot something. They had taken this proposal to the dean, and Gene had said that he would accept it, but only if Bittker supported it. I don’t know why he made that condition, but he apparently did not want much opposition. He wanted to have very strong support so that there would be no more than a couple of votes against the proposal, if any.

**BC:** And you supported it?

**BB:** So I was asked that morning by my younger colleague what I thought and I said, well, I think it’s a good idea. I think it’s an excellent compromise. As far as I’m concerned, we’ve gotten exactly what we want in the sense that these people are not to be made professors and won’t even be on the tenure track, and, as for the people that are going to work mainly as research associates for Mac, we don’t really care. I wouldn’t really care, as long as the school is able to treat everybody fairly with respect to research money and, if Mac could get additional funds to support this, which apparently was in the cards, I wouldn’t have any objection to it.

So I was asked, what about Grant and Charles? I said, well I'll support it, and I'll talk to both of them. It's going to be difficult with respect to Grant because he's in class now. I should have added that the faculty meeting was to take place an hour later. I talked to Charles, and he said he wanted to think about it a little bit, but he agreed with me that we had virtually won. However, I was not able to see Grant until he came out of class and that was only a couple of minutes before we went into the meeting, and Grant said to me that under no circumstances would he accept even that compromise.

So the upshot was that it was carried with Grant's opposition and also with Charles'. So there were two votes against it. Everyone else, including myself, supported it.

When we came out of the meeting, Charles told me that he had voted against it only because he couldn't bear to see Grant totally alone on that subject, and Grant said to me almost immediately after, "Boris, I'm resigning," and I urged him to reconsider but he refused to. I later called Helen, his wife. I should have said earlier perhaps that Grant and Helen were among my wife and my closest friends here. They had children somewhat similar in age to ours and we were in the habit of spending some holidays like Christmas with the two families together. So we were very close. I spoke to Mrs. Gilmore, Helen, and urged her to try to get Grant to change his mind, and she said there was not a possibility of that.

We then tried to get to Kingman Brewster, who was by then president of the university. He was somewhere in the Caribbean, but the then provost – I've forgotten his name – went to see Grant to try to get him to change his mind, and Kingman went to Grant's house as soon as he got back to New Haven to try to persuade him to change, but Grant wouldn't. Grant then accepted offers. Once the word got out that he was leaving Yale, he had no trouble getting an appointment elsewhere, and he went to the University of Chicago, where he stayed for a number of years.

I remember one of my last conversations with Grant before he left for Chicago, very strained. I said, "Grant, you know, you're not going

to like it.” I said, “Whatever complaints you’ve got about Yale, you’re going to have equal complaints about Chicago,” and Grant’s response to me was, “That’s probably so, but it won’t be Yale.” Such was his devotion to Yale that his view was that he couldn’t stand blemishes here that he would be willing to accept at another school. It was a very painful and difficult, really almost tragic, culmination of that year and that particular problem.

Grant went to Chicago. They moved from New Haven partly to Chicago, but mainly to Norwich, Vermont, where Helen had inherited a house, which they had used for weekends previously. Helen spent most of her time in Norwich after that. She didn’t like Chicago. She had an appointment in the Department of Psychiatry in the Yale Medical School. She didn’t get anything of equal interest to her at Chicago and finally sort of gave up her academic pursuit and stayed in Norwich. Grant had virtually no significant professional relationships with the Chicago faculty there, collegial relationships. So matters rested until Abe Goldstein became dean, and by then we felt that maybe enough time had elapsed so that we could somehow get Grant to return to Yale, and there was no trouble about getting unanimous faculty vote in favor of that. Abe, having talked to Grant, learned that Grant would be willing to accept an appointment and so he did, but that did not really restore relations as they had been before, because Grant spent most of his time after that in Vermont. He came down to teach his classes, took almost no part in the collegial life of the school.

I might just add as a sort of personal note that Grant and Helen and I had finally a rapprochement very late in Grant’s life, but of course it couldn’t restore the breach that had existed for all those years between us. **BC:** That’s too bad and such a dramatic story. I appreciate that you recounted it in such detail. Let’s move on now and talk a bit about the 1950s.

**BB:** Okay. You’ve asked me about the 1950s and early 1960s and in particular about the impact on the Law School of the McCarthy hearings and similar developments in Washington. Quite early, and I think really

before McCarthy came to center stage, there was already a House Un-American Activities Committee, which carried on work somewhat like McCarthy's later on. I would say the Law School faculty was very largely critical of those developments in Washington and felt that chasing after communists was not a very important or promising activity, and that unfairness was being exhibited in the questioning of people and in the besmirching of their reputations.

We had a sort of joint faculty response or comment on the activities with a letter signed by, I think, every member of the faculty who was asked to sign it, condemning the House Un-American Activities Committee. One of the signatories, Bill Moore, later on used to say that it was a mistake on his part to sign it, and that he regretted it, but even Bill who is very conservative in his outlook, joined the criticism at least as of that time.

It was that and then the McCarthy Committee – which succeeded it – that certainly had an important effect on the intellectual life of the country. Yale was one of those institutions where the administration was able to resist giving in to those witch hunts, as I would call them, as some other institutions did. The university got plenty of letters of criticism from alumni about faculty actions like the letter I just described and the much more frequent individual comments that were made by faculty, particularly in the Law School. But the impact on our own world I think was rather slight.

Tom Emerson said, I think it was in his oral history, that he didn't even know from the university about the letters of criticism and protest that had come in from alumni. That he was never told officially about them and therefore never felt under any pressure to change his demeanor or his tactics, or his statements or his affiliations. He said he knew they weren't popular, but he credited the university with never calling him in and telling him that he was causing difficulties for the university.

I had a very minor taste of what was a very virulent problem in other schools, but which I'll explain was trivial so far as I was concerned here.

That was that one of my pedagogical works on federal estate and gift taxation was reviewed by a reviewer for the New York State Bar Association newsletter, and the reviewer focused on my introduction to federal estate taxation, which indicated quite clearly that I thought that death taxation, inheritance taxation, was good social policy, and the reviewer announced that what I had to say on the subject was thinly disguised communist propaganda. That book review attracted some attention and, among the people who read it, was a friend or perhaps the lawyer for a very substantial, very generous contributor to the university. Not to the Law School, but to the university generally, and particularly the Sterling Memorial Library. He wrote the members of the Corporation that his attention had been called to this thinly disguised communist propaganda being emitted by Associate Professor Bittker and in his letter to the president of the university, copies of which went to members of the Corporation, he apparently made some mention of his gifts to the university, which as I say were very generous, very substantial, and then went on to say that this kind of thing discouraged him and made him wonder whether he should continue to provide in his will, as he had, for additional gifts to the university.

Well, it just so happened that the members of the Corporation received copies of that letter just as the recommendation for my promotion to full professor arrived before the Corporation. In those days, perhaps still, the procedure with respect to faculty appointments was that tenured appointments, maybe all appointments, had to be formally voted by the Yale Corporation, and at the time of which I'm speaking, which is back in 1951 as I recall, that was not entirely an automatic rubber stamping. I was called in by the dean here, Wes Sturges, who said that the recommendation for my appointment had come before the Corporation, and one member of the Corporation said, "I've received a letter of complaint about Bittker and I want this matter put off until it's been properly investigated."

So Sturges said to me, "Let me have a copy of that book that they're talking about." So I gave it to him and he sent it over to the provost,

who at that time was I believe Mr. Bach, Steven Bach — though it may have been Furniss. I think it was Bach. In any event, Bach received the book and the following day called Sturges and said, “It’s ridiculous. Tell Bittker not to be concerned. This will go through at the next meeting.” Bach, if it was he or Furniss, either one, they were both men of impeccable conservative reputations, and his statement that it would go through simply set my mind at ease about the subject, not that I really thought previously that my status was in danger.

**BC:** It did go through without comment?

**BB:** Oh, yes. Yes. My point is simply that, although McCarthyism had a big impact throughout the country and in many quarters, Yale was in a position to resist, and so far as I was concerned, did so. I think Tom Emerson, who was the person who would have been most in danger, if Yale’s policies had been different, would concur in this judgment.

There was one appointment during that period in the history department, as I recall. I know the name of the person, but I don’t think there’s any point in mentioning it now. This was someone who was active in left-wing causes, and his appointment was not renewed by his department. I was convinced that it was not renewed for bona fide reasons having to do with his competence, and it’s my recollection that Tom Emerson, in his oral history, said the same thing. I know it was his view because Tom told me that there was an effort by friends of the person in question to get Tom to either organize or serve on a committee of protest, and Tom refused to because he knew the person well. He knew him through their meetings with left-wing organizations, but he simply did not have a high opinion of that person’s scholarly attainments.

**BC:** Now, moving on to the 1960s, there is much to talk about, as students began to voice opinions about both institutional and national matters.

**BB:** Yes. We began to feel the effects of the rising student protests throughout, and then as time went on, and as they began to reach the crescendo that they reached during the Vietnam War, of course, they boiled over here. I don’t have to recite the stories about Yale. They’re well documented for that period, but I would comment on a couple of things.

One was that during the Bobby Seale trial in New Haven, which was accompanied by a lot of student unrest and protest and a few incidents of sit-ins and so on, not nearly as difficult at Yale as they were at other institutions, there was a high degree of sympathy in the Law School with those student protests, but at the same time, for student lawyers they were outlets for their protests that reduced their grievances against the administration. By that I mean that they were able to work on briefs for local lawyers who were on the defense side in the Bobby Seale case, or in other incidents that occurred around the same time, and consequently they had a sort of positive vehicle to vent their complaints. I think that was one of the things that spared us some of the most bitter consequences that were visited upon some other universities.

**BC:** That's an interesting point. That graduate students in, say, the Linguistics Department had no actual practical outlet...

**BB:** There was nothing they could do. They would be much more tempted to sit in, let's say, because they wouldn't know what else they could do.

Another very important factor here, though it doesn't concern the Law School specifically, was Kingman Brewster's behavior which was bitterly criticized by many alumni and by also a substantial number of faculty, including a few in the Law School, I think was courageous and though risky, was properly helpful. He was really all over the campus. Instead of retreating and making himself unavailable, as was true of the presidents of Harvard, University of Chicago, and Columbia, Kingman was really tireless in talking with students. He went to dining halls of the residential colleges night after night and engaged students in argument and debate and he, of course, opened the residential colleges to occupancy by the students who came to New Haven to protest on May Day during the Bobby Seale trial. There were predictions of doom as a result of that, but the way it turned out was that Yale was spared the very vehement and in some cases violent protests that occurred elsewhere.

Also, going back to the Law School, the students felt that even though a lot of the faculty were critical of the positions they were taking, they

were doing some things on a professional level which were appealing to the students. Just because I know at first hand, I represented one of the students in the art school who got arrested because he violated the court's order about where protests and meetings could take place. I represented him in court and got his case dismissed, and there were other evidences of members of the faculty who did things of that kind and the students felt — I think the Law School felt — did not feel the same degree of hostility that was felt on other schools.

**BC:** If a can interrupt just for a minute, was there a sense in the Law School that Brewster's approach to the students was generally the way to go?

**BB:** There were mixed views about that, and very strong differences of opinion about his much quoted statement, that he was ashamed to say that he was not sure that a black revolutionary could get a fair trial in America. That infuriated many alumni and some members of the faculty here. I thought it was a perfectly realistic assessment of the times that any trial lawyer would have agreed that it would be very difficult to get a fair trial.

As it turned out, they got an acquittal here. I think they got more than they deserved. I think they were probably guilty. So that in retrospect you could say that Brewster was wrong in that there were other acquittals in other places and so on, but I had the very unusual experience of being told by one of the local lawyers who was involved during part of the Seale trial years later that, although he was very bitter about it, he was a graduate of Yale College and I think of the Law School, though I'm not sure of the latter — he told me that he had been very bitter about Brewster's statement at the time, but in retrospect began to think that Brewster was right. There were other people who said, "Well, he's right, but he shouldn't say it because it undermines public faith in the fairness of American justice."

**BC:** Did Brewster make his presence felt in the Law School during that time?

**BB:** Not so much in the Law School. I can't remember whether he was over here or not. He may have been, but he certainly was all over the residential colleges and he met with graduate students and so on.

**BC:** He didn't teach in the Law School?

**BB:** No. When Brewster was brought to Yale by Whit Griswold to be provost, Brewster made it a condition that he'd receive a professorship in the Law School. You didn't ask me specifically about this, but that led to a lot of joking and perhaps a little bit of annoyance by members of the law faculty who said, "Well, now look, here's a guy who's been at the Harvard Law School for a number of years. We've never made any motions to get him here as a professor of law. Should we vote on that now?" But I think cooler heads prevailed and decided it as a reasonable thing to do.

He hoped to do some teaching here, but what happened was that during the year — he came a year before has was to enter upon the duties of provost, in order to become more acquainted with the institution because, although he'd gone to Yale College, he had been away for a long time. He was a graduate of the Harvard Law School. Whit Griswold became seriously ill in the academic year 1962-1963, and Brewster became acting president, and the result was that he never did have time to teach in the Law School, and then his time was very much occupied almost immediately by the problems going on of student unrest and also the protests by black students which came a little bit later.

**BC:** Leon Lipson mentioned to me the friction between the old left and the new left and that you might have something to say about it.

**BB:** Well, I can comment on it first in general and then from a personal point of view. Tom Emerson would have been considered the representative of the old left at the Yale Law School. Tom had been accused of being a member of the Communist Party long ago. Tom said he never did join the Communist Party, but there was no question that he could have been regarded as a fellow traveler or sympathizer. For a period of time, although as time went on he began to take exception to Commu-

nist Party proposals and positions with greater frequency, but he still remained very much what the French would call “a man of the left” right down to the time of his death.

Now Tom, in my opinion, was always uneasy about the new left, particularly as it manifested itself in the Law School, because the new left tended to be contemptuous of legal procedure, to feel that it was hopeless to work within the system, so to speak, that you have to overthrow this vile, corrupt, unfair system. I don't mean to say that they were genuine revolutionaries. They weren't, but they would be very contemptuous of the Constitution. That it was just a façade in their view and so on.

Tom felt very differently. After all, he wrote a whole book about free speech. He believed in the Bill of Rights and believed that the courts were a major instrument by which one could get a degree of justice in the country and by which social policy of the kind that he favored could be fostered. So that Tom, I think, was always uncomfortable with the contemptuous and cynical spirit of the new left when it discussed the Constitution.

Now, with respect to myself, I was one of the relatively few people on the faculty who had much sympathy with the students, at first with the primarily white students who were protesting and then later with the black ones. I disliked their tactics very much, but I thought some of the things they wanted were justifiable. I was willing to support giving them some voice in matters that had previously been reserved entirely to the faculty, though I didn't want to go too far in that direction. But I had been a troublemaker in my student days at Cornell, so although I wouldn't classify myself as an authentic representative of the old left. In making that comment, Leon was referring to the fact that to some extent I had undeniable and residual links with the leftists of an early period.

I had the same disagreement with students that Tom did. I thought they were very shortsighted and erroneous in their view that little could be expected of the judicial process. Then when the protests about the Vietnam War occurred, I didn't like the draft card burning or a lot of

the other tactics and, having been a combat infantry soldier in World War II, I didn't like the attitude toward the flag or even toward the army that the new left had, so I also was critical. I think that Leon is referring probably to my comments at a big public meeting. Right after the bombing of Cambodia in Nixon's administration there was a huge outburst of student criticism, and there was a great meeting in the auditorium of the Law School, with students calling for a student strike and so on and boycott of exams. I spoke at that meeting, and I told the students that I also objected very strenuously to the military action that had been taken, but I thought the students were directing their protests at the wrong target. I said, "It isn't the university and its alma mater that you really are clinging to. You want alma mater to give you a sanctuary at the same time that you're denouncing alma mater."

I also was very much annoyed with an event at the beginning of that meeting when one of the vigorous outspoken students demanded that the flag be removed from the podium, because he didn't want to be standing next to the American flag. As I said, as a veteran of World War II, I was not very happy about that, even though I had the same political view about the Vietnam War that the students did.

**BC:** Have you had any opportunity to keep in touch with any of the students from that era?

**BB:** To some extent, yes. Here I'll back up a little bit. Because I was in academic life throughout that period, when the students were protesting, sitting in and objecting to this, that, or the other policy and rebelling seemingly against their parents, I was often asked by alumni, particularly of my generation, "How can you possibly put up with these students?" My response on a number of occasions was, "They're my children and yours." I used to argue that in point of fact many of the things that the students wanted were things that they had learned to prize at home, except that parents were more patient in wanting reform, whereas the students had no sense of time, and they wanted everything to happen right away.

I remember some of my alumni friends, as I say of my generation, were rather surprised at my view, but then I pointed out, “If we’re going to expel these students, the ones we’re expelling are your children,” because in point of fact these student movements were overwhelmingly representative or populated by students of upper middle-class families. These were not the children of the working class. For the most part, they were mostly children of doctors and lawyers and ministers and corporate executives.

Now, with respect to keeping up with them, yes. I won’t say that this anecdote is typical, but it does illustrate the fact that the overwhelming bulk of those students after a period of years have turned to rather conventional pursuits. In a way one can say, it’s too bad to see that fire go out of their spirits, but I think probably many of them were happier after they changed. The anecdote concerns a telephone call I got one day from – this was probably in the mid-1980s from one of our graduates of ten, twelve years earlier who had been very alienated during the Vietnam War from the establishment. Although he was in law school, he told me at that time he didn’t want to have anything to do with the law. He was going to go into teaching, and he wanted to teach in elementary school so he wouldn’t have anything to do with the world of the establishment. Well, this was a telephone call from him, and he was with a Washington, D.C., law firm, a well-known law firm, and he said, “Professor Bittker, this is so and so. You may be surprised to hear from me.” I said, “It’s a pleasure to hear from you. Where are you?” He told me he was with this firm and he said, “I’m calling because we just interviewed one of your graduates” – this is a women student whom I’d known reasonably well and I guess who had given my name as a recommendation. He said, “I wanted to ask you about her.” I said, “Well listen, first I want to ask you about you. What’s happened to you?” He told me that he had taught elementary school for some years and then finally decided he wanted to get into law. I said, “Well, how are you enjoying it in that firm?” “Oh,” he said, “it’s marvelously interesting. I’m having a wonderful time.” I said, “What kinds of things are you working on?” He said, “Oh, we’ve

got a huge case. We're defending one of the international oil companies against an indictment and anti-trust violation." I thought, "Oh, my God."

**BC:** I wonder if he realized what he was saying.

**BB:** You know, in a way it seems ridiculous or maybe even sad, but from another point of view it indicates that those students were not altogether wrong in what they were asking for, and they had the passion of youth. They naturally had changed some over time.

**BC:** One of the interesting things to me, (I'm a child of the 1960s and was rebellious during that time too) and what's puzzling is raising children and waiting for them to begin to revolt in the same way we did, and of course they haven't been doing that.

I did want to ask one thing about the generational antipathy during that time: Don't trust anyone over thirty. Did any of that play out in faculty meetings or between younger faculty and older faculty, or particularly with students and faculty?

**BB:** I don't think so. We, of course, did have a very big personnel problem with respect to about half a dozen younger members of the faculty who didn't get tenure here during the 1970s. There certainly was a difference in outlook between most of them and the older group.

**BC:** That may not have been so much political as –

**BB:** Well, to some extent. It was not overtly political, but it was political to some extent. It certainly manifested itself to a degree in the kinds of things they were interested in and thought was good scholarship and how they conducted their classes. It was a difficult period. That would take a long time to discuss and you ought to get somebody younger who was more directly in on that. Abe or Joe Goldstein would be good possibilities.

**BC:** Okay, well let's close now. This has been such a pleasure, and I thank you so much for your time and wonderful reminiscences.





