

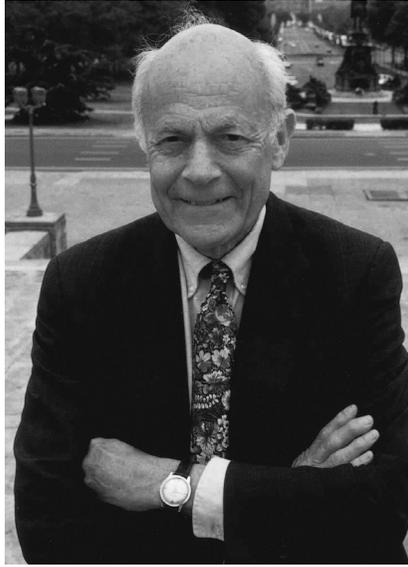
Yale Law School
Oral History Series

A CONVERSATION WITH
LOUIS H. POLLAK

Interviewed by Bonnie Collier

New Haven: Lillian Goldman Law Library
Yale Law School, 2012

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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.

LOUIS H. POLLAK (1922 – 2012) served as dean of the Yale Law School from 1965 to 1970. He received an A.B. from Harvard College in 1943, an LL.B. from Yale Law School in 1948, and clerked for Wiley Rutledge at the U.S. Supreme Court. He joined the Yale Law School faculty in 1955. In 1974, Pollak joined the faculty at the University of Pennsylvania Law School, serving as dean from 1975 until 1978, when he was appointed Judge of the U.S. District Court of the Eastern District of Pennsylvania.

Pollak published widely in the area of Constitutional Law and served on the board of the NAACP Legal Defense Fund.

Louis Pollak

First Interview, May 23, 2000

BONNIE COLLIER: This is Bonnie Collier and it's May 23, 2000, in Philadelphia and I'm talking with Judge Louis Pollak, who has agreed that we'll start with a short biography – where you were born, where you grew up, where you went to school and ramble on about anything you like.

LOUIS POLLAK: All right, really have to be a short biography? (laughter)

BC: No, no it can be a long biography. (laughter) I have four tapes, so we can go as long as we want.

LP: Let's see. Born and brought up in New York City. We lived up in the Upper West Side near Columbia until, oh gosh, until I was thirteen or fourteen and then my parents decided to move down to the Village. My father was a lawyer, Walter Pollak. He was a very, very prominent lawyer, though I didn't really appreciate why or the extent to which he was a figure of real consequence until, oh gosh, until after he died. He died in his early fifties when I was in my freshman year in... just starting my freshman year in college. Walter Pollak was probably the most important civil liberties lawyer of the twenties and thirties. The two major First Amendment cases of the twenties, the Gitlow and Whitney cases, were cases that he argued in the Supreme Court when he was in his early forties. And in the thirties he argued the Scottsboro cases that...

BC: The Scottsboro cases?

LP: You're familiar with them?

BC: Yes.

LP: Yes, well, he twice argued those in the Supreme Court, first establishing principles about right to counsel, and the second principles about non-discrimination in jury selection, which were fundamental. But I don't think I had any appreciation of what a consequential figure he was. He wasn't a great lawyer in the sense of making a lot of money. That was not it in the twenties or in the Depression years. But growing up in that

household, my mother was a housewife who should have been a doctor, but in her generation she was not a doctor.

BC: Why do you say that? She had an interest in medicine?

LP: Yes, she got a masters degree in chemistry. I remember when I was a child, she, for an extended period of time, she did volunteer work in the laboratory of a pathologist at NYU. She really had no interest in keeping house. She did whatever minimum was required.

BC: How many children?

LP: There were three of us. I had two older sisters. So I was the, probably rather spoiled, youngest and son. Grew up very pleasantly and comfortably. My sisters and I all went to a, so-called, progressive school in the upper west side of New York, except that after tenth grade, I went off to school in Colorado for two years. Why? I still can't figure out why. (laughter) My parents, which I think real chiefly meant my father, thought I wasn't being challenged by the school that I was at and...

BC: I wonder why Colorado and not...

LP: Because, uh, I wonder, maybe it was the easiest way for my parents to reconcile themselves to whatever was, whatever sending a kid off to a boarding school did to their liberal principles. I don't know, but the school was one they heard about because John Dewey was said to be interested in it. I don't really know whether that meant anything more than the fact that while I was a student there, a grandson of Dewey's was a student. But maybe he'd been interested in it. It had only been established in about 1930 so it was a new school. It turned out to be, whatever claims to progressivism, in terms of progressive education it had, I don't think I can begin to document. It happened to have several very good teachers, so academically it was a fine place to be. In my judgment, a miserable institution in the way that the whole idea of sending adolescent boys off to a gender-segregated institution.

BC: Maybe their motivation was that at least it wasn't Exeter or Choate or one of the eastern elite schools.

LP: Maybe, but after I graduated from Fountain Valley in 1939, my par-

ents looked at me and I was all set to go to Harvard. They decided that, let's see in 1939 I was still sixteen, I guess, when I graduated. I think they looked at me and decided I was very young and very small, and really I ought to spend another year doing something before I went to college. So where did I spend that year? At Exeter.

BC: Oh! (laughter)

LP: By then, I guess they had become inured. I think my father also had some notion that to be sent out west was going to make a man out of me.

BC: Well, that's mythological...

LP: Yes, the whole thing was, but anyhow, I survived both the two years at Fountain Valley and the year at Exeter. Went off to Harvard and actually the evening before I was to leave to go to Cambridge, my father had a heart attack. So my parents did not take me to Cambridge to install me as a freshman as I planned. We installed my father in the hospital. Some two weeks later when, in principle, he was supposed to be recovering, he suddenly died. That I would guess is why one of my sisters became a doctor. She did what my mother did not do. And my sister who became a doctor was quite clear that if Walter had any decent doctoring...

BC: He might have survived that.

LP: He would have survived.

BC: Had he gone to Harvard?

LP: He had gone to Harvard both as a undergraduate and to law school. Actually he started as an undergraduate at Columbia and then transferred to Harvard, completed his undergraduate years at the college, and went on to law school. He graduated from college in 1907, the law school in 1910, and was a very devoted alumnus of that institution. I remember going to the, our family going up to his 25th college reunion in 1932, and that seemed like a great occasion. I mean, I was nine and it was wonderful. But curiously, I remember that in the late thirties, I mean it probably was when I was in high school or home on vacation from one of these schools, my father, this devoted Harvard alumnus, telling me that he had come to the conclusion that Harvard was no longer the best law school.

BC: In the thirties?

LP: Very late thirties.

BC: Would he have said that Yale was?

LP: He was saying that Yale had a very good law school.

BC: So early.

LP: I think, I have a feeling that what he meant was not that it—I think what he was saying, although I can't quote any particular words, but the sense that I have, though maybe I reconstructed it later, was that he felt that Harvard was kind of stuck in a gritty, hide-bound, narrow posture that wasn't as open to new ideas as Yale.

BC: He might have been thinking legal realism/formalism.

LP: Could well have been.

BC: Yes.

LP: It's entirely likely that he was, but he certainly never tried to tell me anything about any of these matters. Nor indeed, I don't even think I was very interested. Well, I was interested enough, obviously so that it's a memory that stays with me, that piece of conversation. Whether anything else went with it or not, I don't know. When you ask where does it play out in realism/formalism terms, my instinct is that you're probably right. I'm trying to think, among his close friends, well, there was one figure at Harvard, one major figure at Harvard, who was Chafee, Zechariah Chafee, who was the great First Amendment scholar who was updating in 1940, the book that, I guess, he'd originally written a decade before. Chafee's book, indeed, talks about my father's cases but, and he had worked with Chafee on important matters, but even, they had done work for the so-called Wickersham Commission in the early thirties. They did major stuff. Actually, I'm trying to remember whether Tom was involved. Maybe not. Anyhow, they did important—wrote important reports for that Wickersham Commission, one of which the commission didn't publish. It was published outside the rubric of the commission. The process itself had been a rather mutinous activity. But also, one of his very closest friends was Robert Hale of Columbia, who

would have been sort of a voice for legal realism. Hale was one of the very early people who knew some economics. I mean a lawyer who knew some economics.

BC: Yes. Well, Yale at that time, late twenties, early thirties, was stealing realists from Columbia. That was the controversy.

LP: That's certainly was what they were doing.

BC: Yes.

LP: Bringing, stealing Underhill Moore and Douglas and so forth. I don't know that Walter Pollak had any particularly close friends at Yale. I don't know that he didn't. But I'm sure he had no really intimate friends in the way that both Chafee at Harvard, and Hale at Columbia were. But I remember being very surprised by this judgment of his which I heard and then totally forgot about until about half a dozen years later when I'd think about where I was going to go to law school.

BC: Yes. There's such a tension there, between the idea of law schools training people to become practicing lawyers and law schools also training people, on the other hand, to become scholars. And that's where this kind of bubbles out, with legal realism and formalism, and these two institutions are kind of the focus of that controversy. I hadn't realized that it had spread so quickly by the early thirties. I thought it took a while before the...

LP: Well this would have been the late thirties.

BC: Oh, the late thirties, yes. By then, sure.

LP: Yes, by then, I mean I can't trace it exactly, but I'm pretty sure that I was in high school by then. And it might have been the kind of conversation in which my father was projecting what I was likely to do at a point where, you know, I was still a couple of years away from college and was hardly thinking about what law school to go to. Except, except in the sense that I never really thought about doing anything other than becoming a lawyer, because I grew up in this law household, and it was sort of all I knew about.

BC: Nothing else crossed your mind?

LP: I remember, when I was out at Fountain Valley, there was some kind of a test we were administered, which I suppose was supposed to give us some location and guidance. It was a test to determine what disciplines your interests corresponded with.

BC: Yes.

LP: And, on the basis of that, it turned out that my highest score, I think it was a B minus, was of coincidence with interests of people who were musicians.

BC: Oh, really?

LP: And, given that I had absolutely zilch musical talent, that seemed to me a very instructive test because there was nothing else that it even registered up in the B range (laughter). Apparently I had no interests at all (laughter) of any clarity.

BC: Wonder how they got to music.

LP: I have no idea. But anyhow, so law was what I was baited for, to the point where thinking about what I do know that my father contemplated for me, and this is all I can remember that he thought of, at least that he articulated to me as a future, was that after going to law school, I would be a law clerk for Justice Cardozo. Now, Cardozo was a very important figure in my father's life. My father, as a very young lawyer, had worked for Cardozo. And just before Cardozo, when Cardozo was still in practice, the man ran for the bench. My father graduated from law school in 1910 and went to work for Sullivan & Cromwell. He was there for, I think, two years and couldn't stand it. It was such an enormous firm.

BC: Oh, um-hum.

LP: And he went there because his older brother, who was ten years older, was already well established there. And he left to go to this very small firm which, I think, just had two or three lawyers, which was Cardozo's law office. And within a year, I guess, after going to Cardozo's office, Cardozo became a judge and my father remained. He was taken into partnership by Cardozo's partner. It was quite remarkable for this young man. And that was the firm that my father was with from, I guess, just

before World War I, about 1915, until the mid-1930s, when that firm collapsed in the Depression. Englehart, Pollak, and Clark was the name of it. And it collapsed in the mid-1930s. They just couldn't hack it anymore. My father then became of counsel to what was then called Cohen, Cole, Weiss & Wharton and who was to be the founder of Paul, Weiss. Louis Weiss and Walter Pollak were good friends and the families were friendly. And, indeed, I wound up marrying Kathy Weiss, who was one of the Weiss daughters.

BC: Oh!

LP: Wonderful.

BC: Thinking about going to law school, you were at Harvard and...

LP: Well, there had been this intervention by my father that I paid no attention to, that I could think of, at the time. In high school I wasn't too much excited about where I was going to go to law school. None of this became operational until late 1945 when I was getting out of the army. I had finished Harvard in 1943. I was in the class of 1944 but by accelerating, I actually completed my undergraduate work just before I was drafted. I had an extraordinarily cooperative draft board that said, "Oh, you still have work to do? Well, just tell us when you're finished." (laughter) It was quite an improbable kind of experience but the result was that I was not drafted until a good deal later than really most of my contemporaries at college. I finished college. Went into the army. In later 1945 I was going to be discharged, and what next? It was pretty clear to me that I was going to go to law school, though I had a slight pull away from it. At college I had majored in American history and literature and loved it, had terrific professors.

BC: I'm trying to think of who would have been in the History Department in the early 1940s at Harvard.

LP: Morrison, Samuel A. Morrison.

BC: Oh, yes. Did you have him?

LP: Yes. Frederick Merk. Do you remember who he was? He was a great historian of the west and of the westward movement. He was a disciple of

Frederick Jackson Turner. Morrison, uh, those were, I guess, the major people on the American History side that...

BC: Was Morrison a good teacher?

LP: Uh, yes. Yes, indeed he was. I don't remember him as outstanding, but certainly, certainly very good. I took his course in, sort of, seventeenth-century Massachusetts Bay Colony, pre-revolutionary. I tried to take (laughter) – I wanted to take Arthur Schlesinger's course. What did he call it? No, it was sort of a history of American, damn, I can't remember. But it was kind of a sort of cultural history. This was Schlesinger, senior.

BC: Oh yes, right.

LP: And I couldn't get in. We had to...I can't remember why. There were too many people, or there was a lottery, or whatever. Anyhow, I couldn't take his course. What I remember as sort of symptomatic of what Schlesinger would do is talk about the impact of the development of the dollar watch and what kind of democratizing influence does that have.

BC: Early social history.

LP: Yes. And I don't think – that's right – and I don't think he was regarded as a great teacher in any, sort of, lecture performing, but I knew he was a major figure. It was on the literature side that I was interested. Oh, I forgot, I should have mentioned that one of the great things about the field was you had tutors, the tutorial process was very important in liking the history and literature. And my first tutor was Daniel Boorstin.

BC: Oh, really?

LP: Yes, who was a fellow at the law school at the time. I can remember the first reading which he made me do. It was to read some Jefferson and some Hamilton and then come back and talk to him about it.

BC: Oh, boy, what a treat!

LP: That was to try to get through my fuzzy mind. But maybe, maybe Jefferson wasn't right about everything and, uh (laughter). But there-after the person who was my tutor thereafter, after Boorstin, and under whom I wrote a senior paper, was F. O. Matthiessen. You would know that name.

BC: I know that name. Yes.

LP: He was a great, great teacher and scholar.

BC: What did you write about?

LP: I wrote about the southern agrarian poets, John Crowe Ransom, Allen Tate, Robert Penn Warren. He was young and – sort of – at the edges of those things, writing about that agrarian movement. And Matthiessen was just an absolutely extraordinary figure. Of course I was a waste of his efforts, because I went off to become a lawyer but...

BC: Did that ever come up? Did he ask you what you thought you might do? Did anyone encourage you to go or not to go to law school?

LP: After, when I got out of the army, I went up to Cambridge. I went to talk to Matti. I told him I pretty much thought I would go to law school, not come back and get a degree in American Literature or whatever it would be called, Civilization. I mean, he was disappointed, clearly, but not, not destroyed. (laughter) But he was very clear: if I was going to do this thing, if I was going to go to law school, I was to go to Yale, not to Harvard.

BC: Really?

LP: Yes.

BC: So does this mean that it was understood in the academic community that Yale would be more compatible with scholarship than Harvard? Or am I stretching that too much?

LP: Well, I'm not sure that it was a scholarship thing, but it had a much more liberal, open attitude about it, and Matti was a liberal in the Harvard scheme of things. He was really quite part of the left. He described himself as a Christian and a Socialist in the notes that he left when he killed himself. Did you know that's how he died?

BC: No.

LP: He killed himself in 1950 or 1951. Went to Boston and got a room in a hotel, and he jumped out the window leaving various notes.

BC: Oh my goodness.

LP: Why? I don't know. The notes would tell you that he was – he was

distraught about the shape of the world. He was quite a radical figure, but I guess the Russian takeover of Czechoslovakia was bad news for him. But what I don't know, and didn't know at the time when I was an undergraduate, and I think most of my contemporaries were his students, I don't think we were aware that Matthiessen was gay.

BC: Oh.

LP: And his partner, who was a long-years partner, was considerably older than Matthiessen, had died in 1940 or 1949 or something like that. And he was probably a very sad man because he lost his partner.

BC: Lonely. Lonely and sad. Yes.

LP: There were people who knew about it. I don't think I knew from gay, what that was.

BC: Yes. It was a difficult time. Difficult years to be a gay person.

LP: Anyhow, Matthiessen said, "Go to Yale."

BC: And your father had mentioned something about it.

LP: Yes. But meanwhile I had, before I got out of the army when I was trying to think of what to do, well I was going to go to law school. So I wrote to Professor Chafee, my father's friend, and said I had done the army, and I want to go to law school. And I'd gotten, very shortly, I got back a letter admitting me to go to Harvard Law School.

Well, I went back to New York thinking about this more. I went to talk to, I went to talk to Louis Weiss who had been my father's partner. This was before I was acquainted with Kathy Weiss. Louis was, uh, I didn't know him well. He was a sort of, he was not at that point a father figure but he was, you know, he was a great friend of my parents and it was right to go and talk to him. And Louis Weiss had gone to Columbia.

BC: Yes.

LP: And he said, "Well, there are certain people you should talk to. You should talk to, you should talk to Justine Polier, who went to the Yale Law School, and you should talk to Karl Llewellyn. So I talked to both of those people. Justine thought Yale was very good but she had been there a long time before. I should also go and talk to Tom Emerson.

BC: Oh.

LP: Because Tom Emerson was about to leave the government and come to teach at Yale. Tom Emerson, when he graduated from Yale Law School, went to work for Walter Pollak. That was his first job.

BC: Oh, really?

LP: Yes. And he worked at Englehart, Pollak for about two years before the New Deal began and then he went down to Washington.

BC: Then he went to Washington. Um-hum.

LP: Yes. So I went all the way down to Washington to call on Tom Emerson, who at that point was, I think, general counsel of the Office of War Mobilization, and he converted me. He was this terribly old man. I think he must have been thirty-nine or something like that. He was glad to see me and told me that it's his impression that Yale was a very good place. He was going to go back and teach there. I think that was already determined. And indeed, I think that at the same time, I think the Yale faculty voted an appointment to Fortas. Lasswell was appointed about the same time. Well you know, that's approximately it.

BC: Sounds about right.

LP: And I went and talked to Llewellyn. Of course talking to Emerson I was talking to somebody that I at least, when I was a child, I had seen. Llewellyn, sure he knew my father but he didn't know me. But he talked to me, told me, well, when one didn't go to Harvard, the choice was between Columbia and Yale. Columbia was the better school for everybody. Yale was probably the better school for the absolutely top group, the top of the class. But Columbia, for the generality of students, was clearly the better place.

BC: I'm surprised that he didn't have Columbia as the first choice for you.

LP: Well, he, I think his intention was to say that Columbia was the first choice, but he was just saying, you know, some kind of elite thing. I think, I think the message was I should go to Columbia. But, of course, I got the message the other way. (laughter)

BC: Oh. (laughter)

LP: Well, (laughter) here was the place for the very best boys, so I went and applied to Yale and was admitted. Just how I don't know, anyhow, I was admitted. And what I can't remember is whether I had to take a test. It was just at the time—I think it was before the LSAT. I'm sure you know all of this but Yale, I guess, had its own test. But I don't remember taking a test. I certainly was interviewed by...

BC: By the dean? Did Dean Sturges interview you?

LP: Sturges, I don't think, I'm pretty sure I was not interviewed by Wesley. Possibly, I just don't remember. Curious that I don't remember.

BC: I'll have to look into the admissions procedures for those years.

LP: I don't remember, but I'm most certain that I must have because that was the time of personal interviews. Gerald Ford being interviewed by Myres McDougal, and all like that.

BC: Yes, I do remember, just a few years earlier than that it was basically only the interview, a kind of cursory look at college transcripts, and the interview and that was pretty much it. But I suspect that just after the war, things tightened up a bit.

LP: I was worried, I think, about whether I could get in because, uh, I forgot to mention this. In the year 1944 to 1945, I had been stationed near Washington, in Arlington, Virginia, and had a lot of spare time, so I decided maybe I should start going to law school. I could go to law school part time. I went and looked at law schools in Washington and actually wound up enrolling in Georgetown Law School.

BC: Oh, you did.

LP: And I took two courses there, one in Real Property and one in Personal Property, so they were called. They were both given by some practitioner who was a part-time teacher. I remember the day before the exam, he called me up and said, "Pollak, the examination, I want to give you a tip. This is a Jesuit school, so I don't want one of those Harvard answers, on the one hand and on the other hand." (laughter) "There's just one right answer." Apparently I didn't get that message very clearly because I got a C in Real Property and a C in Personal Property.

BC: Oh. Too many alternatives!

LP: And when you applied in the Yale Law School, at least then, I'm sure it's still true, there it is in big, bold face, you have to tell them if you've ever been in any other law school and, failure to answer that fully could result in revocation of your degree, and I really, kind of, worried about having gone to a school and gotten two C's, and maybe they wouldn't let me in. The other thing was that the other school that I looked at was Howard.

BC: Oh!

LP: I went to Howard and, without thinking, made my way to the, to where the law school building was and saw a sign saying Office of the Dean. So naturally I thought that's what you did, you looked for the dean. I went upstairs and I asked if I could see the dean, and I was shown in to see the dean and the dean was William H. Hastie.

BC: Oh! You just appeared there and were ushered in?

LP: Just appeared.

BC: Terrific!

LP: William Hastie was very gracious. I sat down and, I'm sure he'd never seen, I was a Private First class in the army, and I'm sure in Washington he'd probably never seen an enlisted man before. (laughter) He, himself, had just been in the War Department and had resigned at a very high-up position in the War Department, and resigned in the middle of the war because he couldn't get the Air Force to stop segregating pilots.

BC: How was that interview?

LP: I just bumbled out that I was stationed nearby and I thought, maybe, I could go and take a couple of law school courses to start with. And I stopped and there was a moment of silence. And then this kindly voice said, "It's all right, Mr. Pollak, we take white students." (laughter) He was a great man. It was unforgettable.

BC: Quite a moment.

LP: And that was silly, I should have taken my classes at Howard but it was, logistically, it was less convenient, or at least so I thought.

BC: Yes. Good idea, though.

LP: Yes.

BC: So then Yale became the place.

LP: Yale became the place and I got admitted to Yale, and I started in February of 1946. That was, that was the time when, right after the war when classes began, both in September and February. And then they had a full summer term so you could go three terms throughout the year.

BC: That's right. That's right.

LP: Most of my classmates went through it in two years, started in February of 1946 and ended in February of 1948.

BC: Did you do that?

LP: Um-hum. But after I'd been at Yale for, I don't know, just a few weeks, I got a letter from Chafee. It was a letter of a man who was very distressed that I had decided to go to Yale. How did I think that I had gotten into Harvard so promptly, just by writing a letter to the Harvard Law School? It was because he had seen to it that I was admitted.

BC: Oh.

LP: And then he explained that Yale was really not an appropriate place. And he talked about the faculty. And there was one figure on the faculty who was somebody of major proper dimension and that was Harry Shulman. But it was a letter, you know you're just a kid, you open up from this great figure. (laughter)

BC: Yes.

LP: And he was obviously distraught. Maybe a week later or something like that, I got a note from him saying please burn the letter that I sent you.

BC: Hah!

LP: So I don't have it. I guess it's just as well that I don't have it. He must have been very upset. But he clearly, he felt that I had made the wrong choice and in some, in some significant way betrayed him.

BC: Personally.

LP: Yes.

BC: And did you ever talk to him about it? Or was there any more correspondence?

LP: No, I don't think, I don't believe I ever saw him after that. He was not a person I knew well but I had seen something of him. It was, indeed, the worst time, but I think the last time I had seen him was in, something like 1941. Chafee's son had disappeared and he came down to New York to look for him, and enlisted my father's former law partners. Carl Stern, who was also a close friend of Chafee's, looked for him in New York and Carl enlisted my help. I just remember checking at YMCAs. And he was not to be found. And a few days later he was found dead in New Hampshire at a railroad crossing. His son had killed himself.

BC: Oh! That has to be the worst thing that can happen to a person in life.

LP: Yes. That's right. That's right.

BC: But he was not a father figure to you.

LP: No. Chafee, no. One knew that Chafee himself was probably not a person that was always in very easy balance. But I mean, in any sense, he was functional but...

BC: But emotionally unstable?

LP: Yes, so I don't know. Obviously, all I knew was I was reading a letter, that there was an awful lot that went into that letter that I didn't understand at all. And some part of it had to do with the battles between Harvard and Yale Law School, Rodell's insults to Harvard, and a good deal of that was in this letter. I mean he really felt that Yale housed people who were...

BC: Well, that's a topic I'd like to get into later, the building tension and Rodell's, kind of, being the focus of some of that. But I wanted to ask you how you found the law school when you got there. What were your impressions? A happy place? An intellectually interesting place?

LP: Yes. Yes. Oh, yes.

BC: Politically?

LP: I don't think I even asked myself whether it was intellectually interesting. It was all new and strange and great fun. And I can give you an idea of how totally uncomprehending I was of the teaching process.

(laughter) Just a few weeks after the term began, my good friends, they had already become my good friends, who lived in the same part of the dormitory, Bob Preiskel and Allan Axelrod, I don't know whether you know either of those names.

BC: No.

Second Interview, October 5, 2000

BONNIE COLLIER: Let's see if this works. Okay, now we can continue, (laughter) after a short little detour.

LOUIS POLLAK: (laughter) I can tell where I was — at what you were asking about.

BC: Okay.

LP: Which was what Yale Law School was like to an incoming student. I was about to tell you how naïve and uncomprehending I was about the teaching process. And it's illustrated by (laughter) by this. So, just a few weeks after school had started, Allan Axelrod and Bob Preiskel. Axelrod was a term ahead of us at that point; he had started in September of 1945. Bob Preiskel and I had started in February of 1946. Bob and Allan said, "Let's go to a movie." And I said, believe it or not, oh, I couldn't do that, I hadn't read my torts for tomorrow. And Allan, being in his second term, said, "Well, that's all right. We'll talk about it on the way down. Tell me, what case are you up to?" And I told him what the case was, this was Fleming James's course. And Allan said, "Well, that case comes right after — you just read that case, and now you're reading this case tomorrow. And the next case is such and such. And what this is all about is — and these are how those cases get hooked up together." And I listened. (laughter) That was the first time that I had realized that there was some sequence here, and there was a reason why a casebook was not a loose-leaf notebook in which you could shuffle the cases around. (laughter) But there was...

BC: A progression.

LP: (laughter) — a kind of a progression. (laughter) It was a startling insight.

BC: It's a good thing you went to the movies.

LP: (laughter) Indeed it is! Indeed it is, or I might not have gotten to the second term. Allan Axelrod went on to become one of the best teachers in the United States. He was the brightest person in law school in my time.

BC: How were the classes? Fun, interesting? Tension-laden? No? Was there tension?

LP: Only in a few. (laughter) But there was tension — our first class was with Addison Mueller. Contracts at nine o'clock. And he seemed to be absolutely terrifying. It must have taken maybe several weeks before we discovered that he was all mush inside.

BC: Oh! (laughter)

LP: But he starts out the class propounding some enormous question, and then looks down at his seating chart, and I mean, just going down names, and says, “Miss Slocum?” And there were two women in our class of ninety: Margie Slocum and Mary Jones. Margie Slocum is right now here in Philadelphia as Margie Bearn, B-E-A-R-N.

BC: I should interview her.

LP: You should. Mary, too. Mary wound up on the Federal Trade Commission. Margie Slocum became a — she was Associate Dean at New York Law School, and I think she was dean of a non-law school. Anyhow, “Miss Slocum?” Margie was sitting right in front of him, in the first row, and most of us were — half of the class was still in uniform. I mean, the whole thing was right out of the army. Margie looked up and said, “Yes?” And Mueller looked at her, and he said, “Yes, what?” And Margie said, [timidly] “Yes, sir?”

BC: (laughter) Oh.

LP: (laughter) That was the way we began law school. The person who was terrifying was Wesley Sturges.

BC: He was?

LP: Yeah, but he was all mush inside, too, but it took a while to understand that. But in his class, he was the most practiced practitioner of the Socratic Method on the faculty at that time. I mean, it was all questions — always questions. And he pushed and pushed and pushed, you knew not where. And he was never mean. I don't mean — he wasn't terrifying in that sense, but you just found yourself pinioned by these questions.

BC: But meanness is a perversion of the Socratic Method?

LP: Yes.

BC: Socratic Method is supposed to be developmental – to develop a theme that’s instructive.

LP: Yes, I just wanted to be sure that I wasn’t understood as saying that it was frightening; it wasn’t, because he was not mean-spirited at all. But in the class in Mortgages – I took it not out of any interest in the subject matter, but you had to take what Sturges was doing. One of my classmates, I guess Sturges was asking him whether it was a clearly enforceable provision. “Oh, yes, Dean Sturges, yes. I think this is an ironclad contract.” “Oh, ironclad. Oh, really? Is that so?” And then began pushing him with questions, in which of course, the whole point dissolves.

BC: About ironclad. (laughter)

LP: And then, as the semester progressed, every two or three days, we’d be dealing with some problem, some other instrument. And Sturges would turn to this hapless young man and say, “Tell me, does that seem ironclad?” (laughter)

BC: (laughter) Oh!

LP: Well, I guess you’ve heard a lot about Sturges in one way or another, but...

BC: What comes across to me is a kindly person. Is that...?

LP: He, in fact, was. I remember an occasion when I and two or three others of us on the Journal went down to talk to him about Journal business. I can’t remember what we wanted from the dean, because I think he was not the faculty advisor; I think Shulman probably was. But maybe we wanted money for something; I don’t know. I remember going down to the dean’s office, the marvelous office, and sitting with him, and laying out whatever the problem was. And then Wesley saying, “I wonder if any of you knows So-and-So?” And So-and-So turned out to be a graduate fellow, a foreign graduate fellow, and I think none of us did know him. And Wesley said, “Oh, well then, sorry to hear that. I’m concerned about him, because I’ve been watching him, and you know,

he always seems to wear the same suit. And I think, I'm beginning to think maybe that's the only suit he has, but I don't really know about him, and I want to be of assistance, but I don't want to hurt his feelings. I thought it would be desirable if we could somehow arrange to furnish him with another suit. I don't quite know whether... I could give him one of my suits, I suppose. It seems that we could find some clothes, but I don't want to hurt his feelings, and I thought maybe if any of you knew him, you might have some insights that would be helpful to me." We all had to confess that we didn't know him. "Well, that is too bad, but I – [sighs] well, I'll try to work it out in some other way, but I want to thank you all for your thoughtfulness in listening to me about it. And thank you for coming in." And that was the end of our meeting.

BC: (laughter)

LP: (laughter) Now, is that a dean for you?

BC: Pretty great!

LP: That is some dean! (laughter) And we would go on, I think, and we hadn't any remote idea!

BC: Should have had him around during the anti-war times.

LP: He was just marvelous! (laughter)

BC: Now, what did you do on the Journal?

LP: I'll have to tell you one more thing. Do you mind if I tell you one thing?

BC: Sure, sure.

LP: First time, Sturges at the beginnings of the small group business...

BC: Oh, yes.

LP: And Bob Preiskel and I and others were in Dean Sturges's small group. And he put us to work. He explained that we were going to work on the reimbursability of corporate directors for their expenditures in retaining counsel to defend them in stockholder derivative actions. That was what we were told. You know, we'd been in law school for a week at that point. (laughter) We didn't know what a derivative action was! The whole thing was totally – I mean, it was all just a jumble of words.

The first thing we were to do was to write a letter to the president of the corporation, advising him on what the New York law was with respect to reimbursability of corporate directors for their expenditures for retaining counsel, and then in their defense in stockholder derivative actions. So, we were going to write a letter to the president. And so we all wrote letters to the president. And then, he had a class the next week; he wanted to talk to us about the letters we had written. And he said, “Well, just one letter.” And that was the letter that I had written. “Mr. Pollak, that was such an interesting letter.” He said, “One thing I should tell you, Mr. Pollak. Well, I thought it was awfully good that your letter was three pages long, and you only had seventeen footnotes. That’s very, very, very, very good. But I should tell you that all of those citations to cases decided in the appellate division in the New York courts — this sounds odd to you, I know, but you’ll find when you get around to the offices of corporate presidents, you’ll find that lots of them, in their offices, they don’t have on their bookshelves, the New York Reports. That must seem very peculiar to you, but it’s hard for many of those presidents to go to the bookshelf and look up the case that you’ve cited and read from it. So I think you should frame your letters in a way that doesn’t require them to do that. That would be a useful thing.” Then he said, “Mr. Pollak, one other thing. I noticed you used a lot of nice phrases that we like, like *per se* and *ipso facto* and phrases like that. You know, those are all very good phrases, all those Latin phrases, but on the whole, I’d suggest to you that all that Latin stuff is really just to be used among us girls.”

BC: (laughter)

LP: (laughter) Oh my...

BC: Very good.

LP: So, anyhow. That was great fun.

BC: Yes. Who else did you have classes with?

LP: The people that I think our class thought were the very best teachers were Fleming James and Fritz Kessler.

BC: Oh, yes.

LP: I never had Harry Shulman, to my regret, because I really, I very much wanted to get to know him a little.

BC: He was supposed to have been a very good teacher.

LP: Very good teacher, and extraordinarily important influence. But he was away sort of half the time at that point, right after the war. He was, he'd been appointed the impartial umpire of the Ford oil workers contract.

BC: Can you clear up a confusion in my mind about the small groups? I guess, mistakenly, I thought that they came out of the development of the divisional program later – maybe a few years later in the fifties – that the small group concept came out of that curricular change. But now you had a small group when you were a student?

LP: We did. I think you're right in a sort of structural sense, that it started at the time the divisional program began. I don't know that they were sort of intellectually related, but the notion became very important of having a small group, in which the content was simply whatever the instructor was interested in. And the instructor set it up so it was to be a framework within which one would do one's first writing.

BC: Yup.

LP: And most teachers, though not all, took third-year students, or some very good student who was experienced, to assist in the supervising of the writing, though not everybody did that. I don't think that Charlie Black ever had an assistant. I don't know, quite frankly.

BC: Oh, yes.

LP: But I guess when we started, there was simply an arrangement under which everybody had a small group experience. When the small group began, as you understood it at the time that the division program got underway, the small groups all were within a framework of being one of the substantive first-term courses.

BC: First year, yes. Right.

LP: So it was Contracts, or Property, or whatever. That's right. And when we began in 1946, what Sturges's small group exemplified was that it was a small group within which you were to first learn something about doing legal research. But the content could be anything at all.

BC: Oh, not related to a course? I see.

LP: So that was why it didn't have any position in the curriculum until...

BC: I see. So then later, during the discussion over the divisional program, the small groups became attached to the first-term courses. Maybe that was the change.

LP: Yes, but I can't really recall whether the two were seen as developing at the same time or not.

BC: Well, you can think more about that. How was Fleming James as a teacher?

LP: Oh, he was just wonderful! He really was. He was so passionate about getting students to see the analytic process through. And he, I guess you – do you have an image of him in your mind?

BC: I have a picture in my mind.

LP: Kind of a tiny little man with shirt collar always frayed. And I have this sense of him, which of course I never saw, but before he came to teach he was for several years working for the New Haven Railroad as it then was, as a defendants' lawyer in personal injury actions. And I have this image – I must have been told about it by New Haven lawyers. The counsel would come in, carrying briefcases and all, and then would come this little fellow, all alone, for the railroad. He'd sit there and then just destroy the plaintiff's case. But he was an enormously decent, kind person with immense integrity, and just this sense of mission to get his students to understand what it's all about, in Torts and in Procedure. He was great.

BC: Modest?

LP: [Pause] Well, modest, yes, but not without ego. I mean, when there was an opinion, when there was a thing to be said, he was there to say it, and to take a position. But all very quietly, but clearly, there it was.

BC: Now, Tom Emerson was teaching at this point?

LP: Tom was teaching. And I think he was generally regarded as very dull.

BC: Yes. (laughter) I've heard that from everyone.

LP: Yes, very plodding and slow. I remember I took Administrative Law

with him. And at the end of the course preparing for the exam, I was reading over my notes, and I never was a very good note taker. But I suddenly realized for the first time as I read the notes that everything all came together in a wonderful way. There was an important rationale running through the course.

BC: I take it he was more engaging one-on-one?

LP: Yes. I was very fond of him. He was very good to me. Sort of a – very good to me. I suppose in part it traced back to having known my father and what not. We knew his first wife, Bert, who died, gosh, I guess relatively soon after we'd come back to New Haven, when I joined the faculty. And then we knew, of course, knew Ruth and that whole marriage was such a wonderful thing. It was enormously rejuvenating for him.

BC: Yes.

LP: And Tom was absolute, just a model of intellectual integrity. Person of strong views, but disciplined. I remember I went to talk to him about something; this was after I was on the faculty, I'm sure. I don't think it was when I was a student. I don't know. But somewhere in conversation I said something about Senator Taft, Robert Taft, rather disparaging. And Tom turned on me: "That's not right."

BC: Really?

LP: And he was talking about somebody whose political views –

BC: Were the other side completely! (laughter)

LP: On issue after issue they would have disagreed. I had to understand Taft's position, however wrong-headed it was, because it was one that was arrived at with integrity, and I should not talk...

BC: Good for him.

LP: Never got over from that. I remember talking to one of the students once who told me that it was so difficult – Mr. Emerson was – he never would express himself about anything. He pushed and pushed and pushed, but he wouldn't express his views. He said, "I never could figure out whether he thought *Brown v. Board of Education* was rightly decided or not."

BC: Really?

LP: (laughter) That's what this student told me. Now that — (laughter)

BC: That seems a little extreme to me.

LP: That I find a little extreme, yes.

BC: Although that ability to see things so rationally and clearly and fairly, is something that we don't see. It's easier to do with the past. I can see Alexander Hamilton's position, you know, vis à vis the federal government and all of that. Even though I think it was wrong, I can see that.

LP: Sure.

BC: When it gets up closer to my own era, it gets more and more difficult. The influence of emotion in our thinking is real.

LP: Sure, sure, yes, yes. Tom was more objective at that. Boris Bittker was just a young teacher and was terrific. I didn't have any classes with Ralph Brown. Underhill Moore was the most wonderfully exciting, unpredictable person that...

BC: Well now, I've heard about him as a teacher. Aside from his scholarship and writing, which is pretty plucky stuff — that he was difficult — exciting yes, but difficult to understand, that things popped out of nowhere, and there didn't seem to be a thread to what he was trying to say, that it was so scattery that it was difficult to follow. Was that your impression?

LP: I didn't have him in any of his commercial law courses. I took something called Jurisprudence, I think it was called, with him. And I don't know what I was supposed to get out of it, but I found it very interesting indeed. Now, in the realm, in the commercial law realm, he was a specialist. If you were smart enough, I'm sure you could get the thread. I didn't — as I say, I didn't have any courses with him in that field. But my friend, whom I mentioned before, Allan Axelrod, became Moore's, you could say, research assistant, though from what Allan tells me he never did any research. What Underhill wanted was somebody to talk with, and Axelrod was capable of doing that, and was just devoted to him. And they would sit for hours and talk about whatever — about banking practices or whatever.

BC: Parking tickets.

LP: Yes, I suppose they did talk about parking tickets, too. There was obviously very important intelligence operating there. I should say Axelrod went on to become a commercial law and also property specialist.

BC: Myres McDougal was teaching. Did you have a course with him?

LP: I did. I think I – Mac – I did not think Mac was nearly as good a teacher. He was still teaching Property at that point.

BC: So pre-Lasswell?

LP: Yes. I think it was – what did I take? Oh, I know. I think at the insistence of Seth Taft, Mac agreed to teach Future Interests, a course which was not in the curriculum. Taft went to him as I remember it, and Mac said, “Well, if you can get – sure, if you can get a group together – a group of Journal people.” (laughter) Such a snotty, elitist thing to have done! And I think it was just at the end of his teaching in the property area at all, and of course, it turned out that he was an extraordinary doctrinal student. He knew it all. And for what it was worth, I took it without any interest; I didn’t have any substantive interest in the materials. I found a much better – from my point of view, a much better teacher of Property was David Haber. I don’t know whether you’ve run across his name, but he was a young member of the faculty who wrote the property casebook with McDougal.

BC: I know the name, and I’ve studied the class book, so I’ve seen the pictures.

LP: Graduated I think in about 1943, right in the middle of the war, and he clerked for Hugo Black, and then came back to teach. And he stayed, was there until maybe 1950 or something like that. But he didn’t get tenure.

BC: But a good teacher, and smart...

LP: He was just brilliant! He wrote the property casebook with McDougal, and the civil rights and civil liberties case book with Emerson. [Interruption]

LP: Would you excuse me? [Pause in recording]

BC: Good, okay. Well, let's pick up with that. We were talking about Myres McDougal.

LP: Yes, it's a little hard for me to separate my perception of him when I was a student from my later perception of him as a colleague. Let me say he was always enormously generous to me – very friendly. I have no possible complaint about him. But, when I saw him as a faculty colleague and a figure in the institution, starting when I was a new assistant professor, I don't think his role was always very constructive. When Rostow was dean, Mac had become a very important figure in the sort of larger law school world. And he had by then, of course, become an important member, and in a scholarly sense, he was becoming an important figure in international law, and law, science, and policy. And I think there were a number of his colleagues who never really saw what great intellectual content of both science and policy was, but obviously nobody was going to stop him from doing anything he wanted to do. But, there was not a great deal of interest in the faculty, generally, in bringing on to the faculty Mac's acolytes.

BC: That became controversial.

LP: That became pretty controversial, and Rostow, I think – I think Gene, he handled, as best one could, the very substantial pressures from this very important figure, McDougal. He would ask the faculty sort of to do more for Mac than most of the faculty felt inclined to do. So that was a kind of attention. Much of what I'm now talking about goes to a period when as a young faculty member I had only minimal acquaintance with what was going on in the governing board.

BC: But when you were a student, McDougal had not really jumped full force into international law, and was doing property and was working with Lasswell? Was he teaching with him when you came here?

LP: I think he was already teaching with Lasswell; that's unclear to me. I can't say that for certain. (laughter) The one course I saw Lasswell in was one that didn't involve Mac at all. It was (laughter) a perfectly marvelous thing called Case Presentation. I'm sure that was its name.

And it must have been the most, largest investment of faculty time per student in the history of any institution – I mean, a law school, because I think there were only a dozen of us in that, and three or four faculty members. I know James was involved, Lasswell, and maybe Miller. But anyhow, what we were all doing – I guess this was sort of the beginning of thinking that one should give kind of clinical instruction, not in the sense of reaching out and having clients, but telling law students about the real world. We were given the – we were divided up into little teams of two, I guess.

Anyhow, we were given a problem, and first we were to arbitrate, first we were to negotiate the problem with our adversary. The colleague was one's opponent. You negotiated out a dispute, and then you pretended that the negotiation was unsuccessful, so then you arbitrated the dispute. Then you had an arbitration. And then you assumed there was no arbitration, and then you had a trial. (laughter) And you would get critiques from the instructors. And I remember having this negotiating session in one of the, what then were seminar rooms. I guess they've now all become offices on the – what is the street toward Beinecke?

BC: Oh, High Street.

LP: High Street, on that side.

BC: Well you know, in our renovation, we've turned them back into seminar rooms.

LP: Oh, I guess I did realize that. Yes, that's right.

BC: You must come see. It's a terrific renovation.

LP: Yes, yes. Of course, I did see that. It was still in my mind's eye that they were offices. Yes, yes. You made them very handsome. They were not so handsome then. So, sitting in one of those long, not large rooms, but rectangular. I was sitting at one end of the table (laughter) negotiating with my – whoever my classmate was, and (laughter) at the end of the discussion, we had the critiques. And Mr. Lasswell was a figure of some consequence. I didn't really know him, but he was fearful, obviously a very imposing intellect. He was explaining to me, "Mr. Pollak" – Mr.

Lasswell didn't think that I'd fully understood that in a negotiation it was my role to, essentially to impose my personality on my adversary, so the discussion would take the form that I wanted it to take, and that that was the key to the process under the force of my statement of the matter. My opponent would realize the weakness of his position, and so it would be negotiated out to a settlement favorable to my client. And Lasswell said, "I really had difficulty apprehending your position. It didn't seem to me it came across with the strength and focus that was essential. Really the problem, well, as I saw it, sometimes I really had difficulty attending to exactly what it was that you were saying, Mr. Pollak. Well, what I'm trying to say is, if you talked louder..."

BC: (laughter)

LP: (laughter)

BC: That's what I should say!

LP: It was an important social science insight! (laughter)

BC: Legal realism.

LP: Legal realism. And Hammy, Hamilton was a showman, and it was kind of wonderful. I realized years later that I had never (my field became Constitutional Law), I'd never taken a course in Constitutional Law at Yale Law School.

BC: Really? That's all that ever gets taught now, it seems. (laughter)

LP: No course – I think there was a course with that name, was given by Mr. Borchard. And Mr. Borchard essentially didn't exist.

BC: That's right.

LP: He was – I don't know.

BC: He wasn't teaching.

LP: He was there. Whether he actually gave any, offered any courses, I don't know, but essentially he was outside the institution.

BC: And nobody was teaching Constitutional Law at that time?

LP: I believe there was no, I mean, I must be wrong, but to my best recollection, there was no course so-called. But Hammy gave a course in the Judicial Process, which I think may have been, could it have been

required first year? I don't know about that. But it was in large measure a Constitutional Law course. I mean, he took an awful lot of, basically took Supreme Court cases and used them illustratively.

BC: So you never took a course with McDougal and Lasswell together?

LP: No. No, I never did. I never did.

BC: Who was teaching International Law, if anyone?

LP: Well, that's a little of a puzzle to me. I think Borcharde, seems to me he would have had a role in International Law, too. I'm not sure. I think he was engaged in those debates with McDougal about treaties and executive agreements. I don't know. I really don't know who was teaching International Law. I only know that (laughter) a few years later, it was a few years after I graduated, after a couple of years of clerkship and a couple of years with Paul Weiss, I was encouraged to apply for a job in the Department of State with a view to working for Philip Jessup, who was our Ambassador at Large.

BC: You did that...

LP: And I did that. And when I was interviewed by Jessup, who would of course have been this major figure in international law at that time – I guess he was the most important scholarly figure in the pre-Mac era, teaching at Columbia. Jessup was, in a very kindly way, asking me what I was interested in, what I cared about when I was in law school, and such thing. I apologized. "I'm afraid I have to tell you." I said, "Mr. Jessup, I've never had a course in international law." And he stopped a moment, and he said, "Well, I'll tell you. If it turns out that we do work together, that you come to this office, and some problems arise in the international law field, maybe I'll take care of those problems." (laughter)

BC: Oh. (laughter) Yes. Now, Fred Rodell?

LP: I did have a course with Fred. He absurdly was still teaching Tax. His fields were taxation and labor law, I believe, at that time. And he gave up – I can't remember whether he gave up taxation first. I think he gave them both up when he decided that they had become merely statutory courses. His Tax course was a ridiculous course. In a way, it was Con-

stitutional Law in very special areas, problems of sovereign immunity and taxation. It dealt with no problem of any significance, and it was a total waste of time.

BC: Was he negative? Cynical?

LP: Sure. Yes. Highly critical. He would take Supreme Court cases that were easy to criticize, and he would criticize them.

BC: Was he at that point doing his legal writing criticisms?

LP: I think, I'm pretty sure he was, because there were a number of my classmates who, I don't know that a large number, but several were very fond of Fred, and I think it was because he had begun teaching or had already begun creating a class built around the Supreme Court. I can't remember if he was doing that when I was a student or not. But he certainly had some seminar that involved writing, and for the students that worked with him, they were very fond of him.

BC: He was a fiery teacher, or...?

LP: Yes, yes. Because he was highly opinionated.

BC: I have a sense that he marginalized himself on the faculty at some point. I'm not sure exactly when – whether he got more and more extreme as time went on, or when actually that happened. But he kind of marginalized himself.

LP: He was becoming pretty marginal when I was a student, yes, when we were students. Oh, he was, publicly, I'm sure he was the best known figure on the Yale Law School faculty, as a result of the books he'd written. I'm sure that's true. I told you about Chafee's distress about going to Yale.

BC: Yes.

LP: There was a lot of negative opinion.

BC: We'll stop for now. Thank you for a wonderful conversation.

Third Interview, March 22, 2001

BONNIE COLLIER: We were picking up at your appointment as Dean in 1965, and I wonder if you could recall the details of that appointment?

LOUIS POLLAK: I really recall very little about the details. It seems to me there must have been a faculty committee that was making recommendations to the president, though I don't remember that for a certainty. I know that Kingman Brewster regarded it as his prerogative to decide who was to be dean, or as a formal matter, who was to be recommended to the trustees, to the corporation and some kind of delicate constitutional issue there, since the faculty has always assumed that the faculty decided, and just got token approval from the president. So, I just say that because I simply don't remember whether there was a formal committee, or a faculty selected a committee, or whether Kingman asked a group of faculty members to be a committee. It seems to me that there must have been something of that kind, that Kingman wouldn't have just said he wasn't interested in any kind of elective thing. He obviously was concerned about that, to solicit faculty views. That he did do, but he must have talked to lots of people.

BC: Do you think, though, that your name was sort of placed in nomination or were you recommended by a committee?

LP: I'm not at all clear that that was the case. There were quite a number of us who were the same age and general station in life, and clearly had a wide range of choice. We talked about a couple of them: Eli and Alex and Abe and Harry. Brown was the one person who was somewhat older than the rest of us and whose name certainly figured. I think I probably said to you last time that Eli, in a way, in many ways, seemed to make extraordinarily good sense, and he was always much closer to Kingman than anybody else.

BC: What was that relationship?

LP: They were very, very close friends, and that may have counted against him in Kingman's eyes. I just don't know. I don't know of the group of

people that Kingman must have been thinking about, Eli and I, I think it's fair to say, we're the least scholarly, and there's probably less to be said for us as representing important work. I don't mean that he or I were defective, but we weren't that (laughter).

BC: I'm sure you weren't defective.

LP: The relatively little we had done, well, that either of us had done, was generally perceived by the faculty, or else we were perceived in the same way that Alex was worth and Abe and Harry and so forth were. So, I guess that was not especially what Kingman was interested in.

BC: I hadn't heard Bickel's name before as a possibility. Did he have some interest in the deanship?

LP: I think the answer is yes. I don't think I can document it but he was...

BC: But that was your impression?

LP: That is my impression. I'm sure he didn't campaign, none of us was campaigning. There was no such process, but Alex was an ambitious guy and I think, at least I think he seriously considered it. I guess, I think for Abe the timing was wrong. Maybe Kingman would have picked Abe but I can't remember if Abe had a leave.

BC: Might he have been away? I think there was...

LP: There was something about his being away or wanting to be away or whatever.

BC: And Ralph Brown?

LP: Ralph. I didn't know Ralph at all well at that point. Up to that point I did not know him well. I had a feeling he was a lot older. Well, actually, he was several years older.

BC: Yes, I think so.

LP: So I saw him as a somewhat other generation and I think in the brashness of comparative youth I sort of saw our generation as the people who were doing and what not, and sort of didn't appreciate Ralph's consequence and I don't know, of course I don't know what was in Kingman's mind. I guess I supposed that in selecting me, he in part had a notion that the kinds of things I was doing were public things. I was doing a lot of civil

rights stuff in relation to the legal defense fund and been involved in the *Brown* case and the work that continued after *Brown* was decided. And I kind of had the feeling that maybe Kingman thought that was good for the school, to have some sort of orientation, though I'm not sure of that, I don't know. It seems to me unlikely that he cared very much that I was an alumnus of the school and that Wellington and Bickel were not.

BC: Right, well, that was another question that brings two other names to mind. One is Leon Lipson, who by that time had only been here, I guess, ten years and was also associated with Harvard. But the other was McDougal. Was McDougal too controversial?

LP: Oh, yes. I think that would have been very difficult, for there would have been too many people on the faculty that would not have been happy with Mac. It was regarded that he was a very powerful and domineering figure. Gene encouraged him and supported him and devoted resources in his direction, and some of that was troublesome to some people on the faculty. I'm really now talking more about people who have been around when we were beginning to get into the act. I don't remember any thought about Mac being a dean, and I'm not sure he would have liked the publicity and all like that, but he had created his own empire both within the school and throughout the national academy. So, he didn't really need it. You mentioned Leon. I can't remember thinking about Leon at the time, or at all, as a possible dean. Maybe my memory's faulty but I don't.

BC: Well, no one else has mentioned it, and it's a little bit curious to me. Maybe I think about all the eloquent little phrases that would have come out of a Lipson deanship.

LP: That's interesting.

BC: Well there was Shulman. It may have been too early to get away from the Harvard problem.

LP: Yes. There would have been a few people. I think that Harvard business, that report from Rodell, I think that was pretty much dissipated. Leon, he was a very good friend, and I just don't remember his name in

that at all, and I certainly never had a conversation with him in which he suggested any interest in the thing, and I'm not sure that he would have done it.

BC: I have the impression that there was no nomination to Brewster at this point, but that maybe just discussions happened and that's how the appointment came about.

LP: Yes. I don't know whether Kingman was offered a group of names by a faculty committee and given preference. I simply don't know.

BC: I suppose that's something I can dig around and find out about.

LP: Have you talked to Boris about this?

BC: I have talked to Boris and I'll have to look back in his transcript. It may very well be that it's buried in there, and I'll check again.

LP: I remember Boris was advising me, which meant instructing me to persuade Ralph Brown to be associate dean.

BC: Oh...

LP: Boris explained that he didn't think one of my many talents was handling a budget and that Ralph, as I say, was not a friend of mine, not an enemy. I mean I just really had no serious connection with him and Boris suggested it, and he talked to Ralph, and he said yes. I guess he thought it over for a while, and I'm sure it was an act of institutional devotion to be an associate dean, and he loved the school, so he was willing to work with me.

BC: And that was a congenial arrangement?

LP: Oh, it was more than congenial. I mean it was, for me it was just a lifesaver, and it made the job possible and, in the course of it, I acquired a very warm, wonderful friend. It was great. He did wonderful service for the school and for the university. And I do mean for the university as well. He was helping Kingman on all sorts of problems of academic freedom and Ralph was terribly important to the AAUP.

BC: He was. He was one of the few on campus who took a leadership position in the AAUP.

LP: Yes. He told Kingman what was needed to be done to keep the

university honest in those issues and Kingman took it seriously. So he was marvelous.

BC: Well he was also involved in, not only the AAUP, but other union-based issues. Is that right?

LP: Well, I'm not sure whether they were labor issues. You mean involving the university?

BC: Yes.

LP: Don't recall that. Could have been to the extent that they were faculty-labor issues. They would have come sort of within AAUP for review. Harry worried a lot about it; he certainly got involved with various categories of union.

BC: I interviewed Ralph and he's very modest. He was very modest, and gave more or less short answers, so he was a very modest person.

LP: Did you talk to him about his work at the ACLU, when he was on the board of the ACLU for, I think, forty years.

BC: I'm sorry that I didn't. But I was, at that point, really confining my conversations to the Law School, and as I went along I began to see that it's really just as interesting to talk about people's careers and other interests, and so I spread out a little bit. I'm sorry that I hadn't spread out when I interviewed Ralph Brown. So, 1965-66, things are quiet and fairly smooth. There were a few rumblings out at Berkeley, but basically things were quiet, and it looked as if your deanship would be smooth sailing. Describe to me how things heated up with campus unrest, and your impressions.

LP: There were so many things that got jumbled together.

BC: I don't mean for you to have to recall details. But just impressions, really.

LP: I think the first things that I remember worrying about and getting heavily involved in were recruitment of black students. That was happening, I guess, starting in '66.

BC: Was that in response to student urgings and demands?

LP: I don't think so. I do remember a conversation with Leon Higgin-

botham, who was an alumnus of considerable consequence. (laughter) Judge Higginbotham coming to his alma mater. I really hardly knew him or knew him only slightly. He was asking, “What percentage of the bar was black in 1900 do you suppose?” “I don’t know, Judge.” “One percent. In 1960, what do you suppose would have been the percentage of Negro lawyers?”

BC: I’m afraid to hear the answer.

LP: “I don’t know, Judge.” “One percent.”

BC: Oh, boy.

LP: “Oh.” And I’ve probably collapsed a lot of things but I think of that as sort of setting up marching orders to do something about it. And so, some of us were going to try to find qualified students. I remember going down to interview seniors at Howard who’d be interested in studying law. Would they like to consider applying to the Yale Law School, and getting almost no reaction at all. I mean nothing.

BC: Really?

LP: Very little. Enough, little enough, so that not long after, I had a conversation with the Honorable Thurgood Marshall, who by then was, gosh, an associate general by then.

BC: Solicitor General.

LP: Yes. And reporting this to him. He responded, something like, “Why should they be interested in going to Yale Law School? I didn’t go to Yale Law School. They know I went to Howard Law School. Why would they think it was important to go to Yale Law School?” (Laughter) Uncomfortable comment. I don’t mean, you know, uncomfortable within the framework of this being funny. But soon we were into an affirmative action program and recognition of this meant, sort of, modifying our standards and LSATs and all like that, which I think for the most part, the faculty was supporting. I think, I said for the most part, I mean, I’m thinking of Alex who, in a variety of ways, became the most critical of my administration. I think, though, in general support.

BC: You say he was in general support of it?

LP: I think with the general idea that we should work hard to get more black students. I think he thought that was right and these may be disconnected, though I don't think they really are. I'm virtually certain that it was Alex, it was on Alex's recommendation, that Jim Thomas came back to the Law School. That Jim had been a student of Alex's, may have been a student of mine, but I didn't think we knew him, but that Alex knew he was out there. It was great, it was fine, good thing that he did. As a matter of fact, I don't remember what the date of that was. Was that before '65? I don't remember, but the problems surrounding the presence of black students began to come along after we had the group, they called themselves the Dirty Dozen and were led by, led, I do mean led, by a student named Otis Cochran who was perhaps somewhat older than the others and sort of used to leadership. And they were saying you know: Why weren't we doing more? Why didn't this school help black students more, teaching money? I guess pretty soon, why wasn't there a black teacher on the faculty? Why wasn't there a curriculum that was geared to their needs? One of the marvelous things was, we had a very bad faculty meeting I convened at the request of that group of black students, met with them. It was a meeting of the faculty with the black students. Whether they called themselves the Black Law Students Union, whether we were meeting with them in that, sort of organic sense. It was in the common room. I mean it was uncomfortable. I still kick myself. Two of these students were posted on either side of the door inside the common room standing in the back.

BC: Posted in order to make sure no one ran out? Is that it?

LP: Well, it was sort of a general sense, yes. And if I'd had any good sense I would've told Otis Cochran he was to ask his friends to sit down, but I didn't, and I think that was probably upsetting to a lot of colleagues. It all sounds like small symbolism, but when the one black student said, "Why isn't there something in this curriculum that helps us?" This was maybe in December. And I'm not sure, December '66, perhaps. I'm approximating the date but I say December because all I know is that after the

Christmas recess Professor Bittker comes forward with a seminar which he would like to offer that next semester in black reparations. He offers this semester, of course, and by the end of spring or in the mid-summer, Boris has written a book on black reparations. It was the most marvelous example (laughter) how a teacher/scholar responds to students saying we'd like something relevant to us in the curriculum. Within three weeks he whips up a course and it turns into a book.

BC: Pretty impressive.

LP: It was pretty great. The white students in the school, I think, were for the most part sympathetic to, supportive of what the school was about. There were a few who were not, who thought that there was preferential stuff going on.

BC: And you heard about that.

LP: Yes, well.

BC: Did a pre-*Bakke* conversation happen?

LP: Well, it's a wonderful event when, um, do you know about Bill Felstiner, who was associate dean following Jack Tate's death?

BC: I know about Jack Tate, but I don't know about Felstiner, no.

LP: Well, Bill Felstiner was for a couple of years associate dean, very able guy who, later on in his career, was Director of the American Bar Foundation. Bill, for a time was the associate dean in charge of student stuff. I'm thinking of a point in 1968, something like that. A couple of students, a very serious young man and woman, came to me concerned because the school was doing something that was inappropriate and indeed illegal. We had assigned a room in the law school to the use of the Black Law Students' Union and turned over that territory to them, and to turn over Law School space to a group defining itself in exclusive racial terms, and providing furniture, and indeed a television set, and so under Title Six, I guess, of the Civil Rights Act, we were doing a wrong thing.

BC: There must have been a women's lounge?

LP: I don't know that there was.

BC: Maybe there wasn't.

LP: I don't think at that point there was, but these students came to wait on me and to rebel under the process saying that they thought that they had to do something under Title Six, and that involved cutting off federal funds. I remember that after this conversation I called up the comptroller or the treasurer, whoever knew about these things, and could I get a memo telling me just what federal funds the Law School had. I shortly got a piece of paper telling me that the Law School had some NIMH fellowship money, I think it was, certainly it was a piece of NIH Fellowship funds, totaling about twenty three thousand dollars, and I knew we had a very small budget by university standards. Twenty-three thousand was not going to hit us very hard, and so I could stand on my version of principle. If it meant that the medical school would lose or chemistry would lose six million dollars and the medical school would lose seventy-four, well, that was just the way the cookie crumbled, and I wasn't going to change what the Law School was going to do. It was my position. This pair of students, they were very earnest and they were being good lawyers, trying to be, and getting advice from me even more from Bill Felstiner how they should pursue this issue and, we gave them advice as to who the various university officials were to talk with. And they went and had their little conversations, then they'd come back, mostly to Bill and report to him how they had done and what they should do next. They came in one day, and they completed all of their work and said to Dean Felstiner, "What do you think we should do now? What would you recommend?" and he said, "Why don't you go to the movies." (laughter) That was terrible, terribly sweet.

BC: Sounds like an effective administrator.

LP: The problems, well, they peaked with the – you know Eric Clay episode? Have we talked about Eric Clay?

BC: No we haven't talked about it. Maybe you can give me a capsule.

LP: Eric, first-year law student, was charged by a visiting assistant professor, George Lefcoe, who was a graduate of the school and then was on the faculty of, I think, Southern California, but had been invited to teach the

property course. Lefcoe charged that Eric had threatened him and what was the nature of the threat? After class one day, Clay had come to him and said, "Listen, Professor, if you don't stop messing over black students, I'm going to beat the shit out of you." Or beat the something. And so there was a charge, and of course disciplinary matters are all confidential, except for this instance, Mr. Clay wasn't interested in confidentiality and wanted to have a public hearing. So we were going to have a public hearing he was entitled to. It turned out there was going to be considerable interest. So it was a hearing that was going to be held in, what then was, room 115, whatever the room, the large wonderful front room that's all been renovated. And then we were informed by Eric's lawyer, who was a third-year student named Mel Watt. You know who he is?

BC: No.

LP: No? Well you now know him as a congressman from North Carolina.

BC: Oh, of course.

LP: He's been the congressman whose district has been reconfigured and reconfigured and reconfigured.

BC: Oh, right, of course. I just didn't, it didn't connect.

LP: Of course not. Why should it? You know who Eric Clay is, no? Well we'll come back to that.

LP: Eric was the lightest skinned of the whole group of perhaps a dozen students, and he had probably the most middle-class professional parents. Mel Watt sought on behalf of his client or maybe the Black Law Students' Union, sought to have the hearing opened up, not just to the student body and the Law School community, but the community in general, the New Haven community. We didn't think that was such a good idea. But the hearing took place. The panel was presided over by Joe Goldstein and the other judges were Jay Katz and Bob Brooks. And I think I was about the only person who didn't attend the hearing because it was the dean's role to review any determination made by the tribunal. If there was anything of a disciplinary nature imposed or recommended by the panel the dean had the authority to review and to reduce, but not to enhance

any discipline. It sounded like a good thing for the dean not to be present. But, it became learned, somewhere in advance of the hearing, I guess Ralph learned it, or Ralph and I did, that Mel Watt in consultation with his client, had worked it out that the defense would be acknowledging that his client had said what was charged. “But,” Mel would say, “But Mr. Clay, what did you mean when you said that?” “Well, it was sort of street talk.” “Well, what did it mean?” “Well, it meant that I was trying to advise Professor Lefcoe that I didn’t think he was handling his black students well and that he ought to be more receptive to what they had to say, and in general I disapproved of the way he was doing things and I would hope that he would try to change his way of handling the class.” So the hearing was held and Eric was on the witness stand and Mel said to him (this is all hear-say, as you understand, because I wasn’t there), but apparently Eric was asked, “Well, Mr. Clay, would you tell the members of the panel what you meant when you said that?” “Well, what I meant was if the professor didn’t stop messing over black students I was going to beat the shit out of him.” (laughter). So the panel found itself with an issue it had to rule on, and they made a recommendation that Clay be suspended, and be suspended for the semester, that he could return after that semester if he apologized.

BC: To Lefcoe?

LP: To Lefcoe, yes. To Lefcoe and he wouldn’t do anything like that again. So that came to me, and this may seem like the way the judicial process should work, but there was a considerable amount of what I guess we would call lobbying, and I heard from lots of people, including, I was advised by the Black Law Students’ Union, I guess probably by Otis Cochran, the head of it, the leader of the enterprise, that if that punishment were ratified by me, Mr. Clay could not agree to apologize and the black students in the school would withdraw.

BC: Would withdraw?

LP: Yes, would leave.

BC: All of them?

LP: That was the representation made, yes. And there were a number of white students who sort of made it clear that they were pretty unhappy about what the tribunal had presented. I don't think I heard expressly from faculty members, one way or another. I mean I don't recall, though I think I could not have been unaware that there were faculty members who felt different things about it. Anyhow, I had to act within a fairly short time frame, and I think if Kathy were here she would tell you that it was the first and only time she remembered in her life that I had difficulty sleeping the night before I had to make a decision. Anyhow, I reduced the penalty to probation. I don't know what probation means. (laughter). I have some idea of what it meant in the context of this courthouse, but I don't know what it meant academically. At that point there were a number of faculty members who were very unhappy.

BC: Because they would have preferred suspension?

LP: Yes, the panel, Joe, Bob and Jay, they resigned from the panel. We had some structures at the time where there was sort of a tribunal in being, so it wasn't that they had been selected expressly for this proceeding, I think. But, there were practically no proceedings.

BC: Did they resign out of pique?

LP: Yes. And Joe was pretty upset with me.

BC: You must have believed that it was best not to incite anger and resentment. Is that accurate?

LP: Among the students?

BC: The black students.

LP: I was profoundly concerned about the feelings of the black students, and I took seriously the threat that they might all leave. And that may have been a bluff. I don't know. But I thought that it would be very, very damaging. I was pretty clear that the statement that Clay wouldn't apologize was an accurate one. At least that was the posture that he was being placed in, if it wasn't his voluntarily.

BC: Do you have idea where he is now?

LP: The last time I knew about him, and this was quite a number of years

ago, I think he was at the University of Tennessee and was assistant to the president, something of the sort. I think he had some quasi-academic position.

BC: In law schools?

LP: Yes, though I think this one was not, this may have been some connection with the law school but he was really working at the university level. But that was a number of years ago and I really haven't checked where he is now. I hope he's still there.

BC: He would be in his mid 50s or so by now.

LP: Yes, yes, I'm sure. The alumni office has whatever records there are. He was very bright and in some ways difficult. We had a very, we really had a good rapport, he and I. In the faculty, I think Alex was unhappy, and I told you about the three who resigned. I remember it being somebody reporting to me that, speaking to Abe, Abe had said, "Well you wanted a strong dean, now you've got one." But I don't know that that reflected any sympathy on his part for what I'd done, but I took it anyhow as some sort of support. I know that Clyde Summers and Tom Emerson were certainly, they were very, very supportive of me.

BC: Was Rostow there that year?

LP: No, but Gene by then was, I think, I simply don't remember his presence. I'm not quite sure whether he had already gone to Washington or where he was. He was not a particular presence in the Law School after his deanship, at least I don't see him anywhere in my memory. He was, of course, a master of one of the colleges for a while, then went to Washington. I don't see him anywhere in the mix. Maybe I've just forgotten.

BC: Boris would have supported you, I would think.

LP: Certainly, there was never any indication that he didn't. Now to some extent he was, well, he was very fond of me, and he tended to support deans who didn't do things too absurd and he had confidence in Ralph.

BC: Was there more to the black students' concerns?

LP: Yes, I guess that I had a couple of pieces about black students. I guess I left out a little piece of it. I can't quite immediately fit all the chronologies

together. There was considerable distress within the faculty and elsewhere about at least one episode when black students came into – they may have been undergraduate students, I can't remember – came into a classroom and wanted to say something to the class or whatever. There was some concern about whether I was properly protecting the academic setting.

BC: You think the issue was broader, an anti-war issue?

LP: I think it was not. I think it was black students in the college who were objecting to or wanting to register their objections to the way they were treated, students of color were treated by the campus police. It was a registration of things that were happening in the undergraduate school, but wanting to get the law students in the community involved. The anti-war...

BC: Let me just fit one other little question in here before we go on to anti-war matters. Was there an attempt on the part of the law students to try to get themselves represented on various committees or be involved in faculty decisions?

LP: That did come along and we did make a deal. We did allow students to come to – student representatives could come to faculty meetings and sit on committees, certain committees.

BC: But couldn't be involved in tenure or appointments.

LP: They couldn't be involved in any appointments or things like that, curriculum and what not. There was a certain amount of faculty grumbling about that but only some. It was a structure which contained a sort of savings clause, whereby if there was some issue that was felt only the faculty should participate in, the faculty could have a meeting by itself and advise the students afterwards that that had happened, and such a meeting could be held either because the dean decided to do it or because x numbers of the faculty, I don't know, three members of the faculty demanded such a meeting. That did have one very unhappy consequence. What I can't remember was, what the occasion of the damn meeting was. Relatively late in my deanship, Professors Bickel, Kessler, and I don't know who the third was, Bork maybe, but I think it required

three members of the faculty to demand a special meeting. That's the only time I can remember that happening. The result was that a meeting was held at our house on Everett Street, on a Sunday, so that we could be safely away from the students. I'll tell you that I can't remember which thing it was that was so dramatically bad but Alex, sweet Fritz Kessler, you didn't know Fritz of course, but...

BC: No I didn't. I'm sorry I missed meeting him.

LP: The sweetest man in the world and one of the best teachers, a great scholar. This meeting was called. We had to have a secret meeting. Kingman came to the meeting. Everybody was in our living room. It was Sunday.

BC: And that was because if you had had it at the Law School there might have been some interruption by the students?

LP: Yes, I mean it would have been very hard to have a meeting about which we hadn't told the students that would take place on the Law School premises. So this was the place for it. Somehow they learned, some students learned there was such a gathering, very likely because some faculty member leaked it to them. Anyhow, there was a knock on the door, or a ring at the door.

BC: Oh, during the meeting?

LP: Yes, one or two students showed up on the porch. I can't remember whether my children went out to say no, you can't see Dean Pollak now or, but it was transparently obvious through the windows that a faculty meeting was going on. So, our secrecy was discovered. We were required, in any event, to tell them after the event, but we had this difficult meeting and of course I've managed to suppress just what it was that was the cause of it.

BC: Some kind of student demand or something.

LP: Yes, I was very angry at the triumvirate that thought we had to have a secret meeting and I thought it terribly wrong. So that was not a good show. Kingman, incidentally, was always, I think always supportive, not uncritically so. I mean, you know, if you wanted advice then he would give

advice, but he was never anything but what a model president should be.

BC: Is it your sense that the Law School was pretty much behind Brewster? I ask because I think of him, and I think some others do, as someone who saved Yale from what may have been a more upsetting fate, maybe more than Columbia's.

LP: Yes.

BC: And that was Brewster's flexibility and understanding to not panic at the time, that saved Yale. Do you think the Law School supported him in that approach to the crisis?

LP: I think on the whole the answer is yes. I think your appraisal is exactly right. I think he did exactly save us. He was great. I think the one point at which there was dismay or dissent with respect to Kingman was when during the trial, the Panther trial, do you remember this event that was going on downtown, Bobby Seale?

BC: I remember and I was there.

LP: Oh. (laughter)

BC: I was sitting on the Green with the others.

LP: Oh, yes?

BC: And I remember being fed by Kingman Brewster.

LP: Really?

BC: That he opened up whatever college it would have been. Maybe was the Old Campus. And there were great vats of gruel, some kind of oatmeal or I don't know what it was, and he fed everybody, basically, and everybody felt that kind of saved the day. To me that was a poignant moment, maybe only because I was there, but it certainly cut through all the tension.

LP: Yes, I think that was a crucial activity. The action of Kingman's that was upsetting, at least to some of my colleagues, was his making some kind of public statement about being doubtful that a black leader could get a fair trial in an American courtroom. That was very upsetting to a bunch of alumni and to a number of our faculty. I remember it sort of became part of my job, or I perceived it, to make some sort of palliated

explanation of what, of course, the president meant and from the point of view of some of my colleagues I'd become a show for, you know, developing this spin to defend the president's indefensible statement.

BC: Well, clearly, I mean we don't need to get into it, but clearly, it was meant as a broader statement about American racism and not a criticism.

LP: Yup, yup, yup, but, unfortunately, there were constituencies that never got reconciled, I'm sure.

BC: Now I don't mean to drag you through all of the details, the ins and outs of the anti-war movement and the Bobby Seale trial and all of that, so let's jump to the end of your deanship. Were you tired of it? Had you had enough? Did you see more trouble in the future? Why not another term?

LP: I was tired. I could sort of remember that last spring, when the transition was underway and Abe was going to take over, the spring of 1970. There was enough uncertainty and sense of risk in the air that we canceled the Law School reunion, which at that time was in the spring. What's now in the fall was canceled, at least I think it was completely canceled. The occasion was one in which Justice Harlan was scheduled to come and speak, you know, in the Commons. And there was considerable question as to whether we could guarantee his security. There was a lot of stuff going on around the university. We felt we were not at all sure that we could guarantee his safety and Harlan seemed a particularly, I mean, he was a physically vulnerable figure. He was no longer young, he wasn't a young, vigorous Potter Stewart and he wasn't our own alumnus, and also his vision was very, very poor, and he was nearly blind and somehow, I don't mean that anyone would have made a different decision on some other judge but somehow I agreed. So I ended up canceling things and that, in turn, was criticized. In fact I vaguely remember Lloyd Cutler saying it was terrible that the Yale Law School should back down from what might be involved.

BC: Well, it may have been that the university alumni weekend, which was, still is in the spring, may have been planned.

LP: May have been a factor but we were certainly making our own deci-

sions. And I can sort of remember a sense of sitting at a meeting in my office, with this young, vigorous aide to take over and assume the leadership on these matters. I didn't feel very good about it, about myself or it.

BC: Well, you were happy then, not to be continuing...

LP: I'll tell you, I think that one of the major factors for me, the whole deanship years were years in which, if you spoke to Kathy, she'll tell you, I just wasn't around and there was only one parent in the household, and it was tough on the children. So there was certainly no push from home for me to continue in this activity. We had a lot of daughters and they were in various levels in school. So there was that, and Ralph was, one term as associate dean was enough for him. He wasn't going to continue. So to have served a second term would have been to serve without Ralph, and this may seem odd, but that seemed like an enormous deprivation, trying to organize running a school without him.

BC: Well, also I think sometimes if there's someone who seems at least willing, it makes it easier to step aside.

LP: Sure.

BC: And Abe, I guess, was willing. He was more than willing.

BC: And that was a difficult year to be willing. He must have done some deep thinking about that. Nineteen-seventy was, I think, the big year, especially the spring of 1970.

LP: Yes, well it was. Let me say one thing about that, two things. First, the point in time in which you were being fed by Kingman. I remember when the campus seemed to be under siege, walking down from the Law School toward the Green, and there I ran into, I guess he was a senior fellow at that point of the corporation, Cy Vance. Out of the scene he seemed to sigh, I guess he was just coming back from the Green, "Things are going to be all right."

BC: He said that?

LP: Yes, it was not just that he was a member of the corporation, but he knew about riots and things like that. He'd been sent out, Johnson had sent him to Detroit to stop a riot or to observe or whatever. He

was, if there was such a thing as an expert, he knew about riots, a riot expert. And here was this reassurance from Mr. Vance that things were going to be all right. That was very rewarding. The other thing related to anti-war activities, again we're talking about winter/spring 1970, was the night that in the middle of the night it was reported that there was a fire in the library.

LP: I got down there and within a few minutes, Ralph came and, of course, he had farther to come, coming in from Guilford and I don't know when this was, midnight, one o'clock, something like that. I think the fire was in the basement of the library and was put out relatively quickly. Then there was an impromptu meeting in room 115, almost entirely of students, in the early hours of the morning. Of course, nobody knew what had happened, but there were all these concerns, had this been set and there had been a fire, I think, over in the Art & Architecture School which I believe did have some really suspicious overtones. That meeting, largely at the initiative of the students present, within a very short time, I mean just sitting there produced arrangements designed by the students and acted out by them, though obviously with Ralph's and my encouragement and support, for patrolling the Law School, student patrols around the clock patrolling the Sterling Law Buildings.

BC: At that point the library was open twenty-four hours a day, I believe. So it was actually, until quite recently, open all night. Did you ever discover who might have, or how the fire might have been set?

LP: Only this, the fire department, there were fire marshals who came in and looked over the premises within the next few days. Their determination was that it wasn't arson.

BC: Oh, really?

LP: Now I think the notion that it was arson has continued because just a few years ago there was something in the alumni magazine, an account by, I think, Steve Brill. He may have been an undergraduate at the time, a law student, and he had some eloquent description of coming along Wall Street that morning or the next morning, seeing the dean looking

at a pile of books that were smoking, with tears in his eyes, and drew a very touching picture of me. (laughter) The notion was that this was a fire that was set and the thing is it wasn't true. It was thought to be so but I think the best information we had was that it was a fire. It was a dismal kind of scene. I remember going down to look at it and I don't know how much you remember. You probably hadn't seen the basement.

BC: I remember every inch of it, because it hadn't changed at all, and I came across some charred books just before the renovation. They must have been part of that fire, and I guess the ones that really burned were discarded, but there were still some charred books left over.

LP: It was a pretty scruffy corner and I think it just hadn't been tended to or whatever.

BC: Except it was damp, which might mean that, you know it could have been set. It's unlikely to have burst into flame.

LP: I don't know.

BC: Do you remember someone coming in and pulling out the drawers and emptying out all the cards from the Law School catalogue?

LP: Gee, I don't remember that. In the Law School that was?

BC: In the Law School, and that is cited as the one destructive act at Yale during that time. And they were not necessarily Yale students. I'm not even sure anybody knows who they were. Students who came in, pulled the drawers out and turned them over and I remember because I was over at Sterling then. I remember people saying, "Isn't it a shame the Law School is the best friend to the students of all, and that they should have suffered this, is terrible." I remember that was the comment of the day.

LP: Oh, yes.

BC: I wanted to ask if there were any pro-war folks on the faculty who made their feelings known?

LP: I think it really went the other way.

BC: That there were none?

LP: Gene went off to Washington, Rostow, and he came back at the end of the Johnson administration, he came back in January of 1969 and

Edna was still in Washington, I guess, with their children still in school, so they were not able to move back into their house on St. Ronan Street until the summer. Gene lived in the Law School in one of those little guest suites. Here he was returning to his school, and he was viewed by large numbers of law students as a war criminal. Yes, he was one of the architects of Vietnam, and he was such a marvelous example of optimism, Rostow was an upbeat guy. Here he was in the midst of this hostile student environment and he, the semester he was not only back teaching but he was living there, and evenings he was drinking beer with students, and they were discovering that he turned out to be a human being. The most wonderful, courageous kind of thing, though I don't think he would even think of it in terms of courage. You know, you're a teacher and this is your school and you spent your time with students. What was dreadful was that the Rostows were so chillily treated by their faculty colleagues, and I'm not now just talking about Law School.

BC: For the same reason?

LP: Yes, but though the Rostows had been an important part of Yale for however long, Gene had come there as an undergraduate in the early 1930s and all sorts of good, respectable Yale faculty people, including people who had been their cordial friends, turned a very cold shoulder and weren't interested in entertaining the Rostows. There was a horrid, bad, bad thing that was going on, and I know that I regarded it as part of my job to, within the Law School framework, to make sure that Gene was treated civilly, with respect, and I don't think anybody on our faculty was advertently, polemically horrid to Gene, but there was no great outreach to embrace him. It was a bad thing.

BC: Tell me about when you left Yale, just impressions of leaving Yale, and what you may and may not have missed about Yale.

LP: It was a complex business. I'm not sure that I've ever fully sorted out my decision to leave. I think after being dean I was away for a year, on a wonderful sabbatical year in London. It was the first sabbatical I had ever managed to actually acquire. (laughter) When I came back, I guess

it was 1972, and I guess not being dean, when things seemed duller, and I missed a lot and I hadn't pulled myself back into anything serious on a scholarly level, and I got sort of displeased with myself. At the same time Kathy, the real question for us was working out what Kathy was now going to be able to do, having finished with the youngest two of our five daughters now in high school, and she no longer needed to be at home.

BC: That was a long career.

LP: She was a very devoted home person and New Haven wasn't, as I think you know, the best of places for faculty spouses who were highly credentialed. What were they to do? Kathy knew, she had been a teacher before we got married, and wanted perhaps to go back in that direction. But then New Haven didn't look like a very likely place and we discovered, being away for a year in London, that there were other places and even cities that were perhaps other places of interest. So then Penn came along and they made us this job where I'd be both in the Law School and in History, or really doing whatever I wanted to do. That sounded like a pretty neat academic assignment. So I found that tempting and interesting.

BC: Was that a kind of university professorship?

LP: Sort of like that, yes. It appeared that I could really do as much or as little of anything as I chose.

BC: You can't beat that.

LP: Very bad idea. It took quite a while for me to figure out whether that was really something to do. I remember even thinking about maybe what we should do is visit for a year. Kathy wasn't interested in that. We wanted to be in one place or another and not sort of in limbo. I remember, at the point of deciding or trying to decide, I remember, I wonder if Geoff Hazard would have any recollection. Talking to him, Geoff said, "Well, you know whether you're in New Haven or in Philadelphia that yellow legal pad will be in front of you on the desk." (laughter) "You won't have any writing on it until you get down to it." (laughter) Leon might have said that but it was Geoff who did. Curious thing is I don't remember talking it over much with the people that you would have

expected that I was closest to. I don't remember talking about it much with Boris, or Ralph, Marvin Chirelstein – I must have – or Leon. Anyhow, I did have something of a conversation with Alex when I left, or when I came back to see him when he was ill. Pam had tried to enlist Alex to come a couple of years before, but he declined. I don't mean that there was any hostility between us, but we were more or less cordial at different times. Joe Goldstein, I think, remained very angry and difficult, remote for me and I...

BC: Over the disciplinary action?

LP: It did seem to me, yes. And in general he was disapproving of lots of things, but I think that really lingered and was only in recent years when I'd occasionally get back that he was cordial and so forth.

BC: What about Abe? He was probably busy.

LP: We continued, it's curious but both Abe and Harry have always been good friends but never beyond, never close friends. I've known these people forever but when I'm with Abe, or indeed Harry for a while, I find I'm having to construct conversations after a while, which is curious. Much more, I think if Alex were still alive, that would be much easier. That would be a much easier rapport.

BC: Or Leon?

LP: Oh, Leon, that was never a problem except (laughter) one was terrified when he was about to cut your head off or something, but no, that was different. Curiously, Alex and I were really closer than Abe and Harry. It's so hard to figure these things.

BC: I've had wonderful interviews with Harry Wellington in the city. And these sessions with you have been so interesting. Thank you so much for your hospitality and for taking so much of your time to talk with me.

