

Yale Law School
Oral History Series

A CONVERSATION WITH

ABRAHAM S. GOLDSTEIN

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 the 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 the 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 the 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 the Yale Law School's past.

ABRAHAM SAMUEL GOLDSTEIN (1925-2005) served as the eleventh dean of the Yale Law School during the years from 1970 to 1975. A graduate of the City College of New York, he received an LL.B. from Yale Law School in 1949 and became a clerk for Judge David L. Bazelon of the U.S. Court of Appeals for the District of Columbia. Joining the YLS faculty in 1956, Goldstein was named Sterling Professor of Law in 1975, the year he returned to teaching after his deanship.

Goldstein's publications include *The Insanity Defense* (1967); *The Myth of Judicial Supervision on Three Inquisitorial Systems* (1977); *The Passive Judiciary: Prosecutorial Discretion and the Guilty Plea* (1980); as well as numerous articles on criminal law and procedure.

Abe Goldstein

First Interview, October 16, 1996

BONNIE COLLIER: Would you give me just a short biographical sketch before we get started with other things?

ABE GOLDSTEIN: You mean when I was born and that?

BC: Yes, where did you grow up, and go to college?

AG: Well, I was born in New York City on the Lower East Side of New York, lived there for the first five years of my life, then moved to the Williamsburg section of Brooklyn. Went to public schools throughout my youth, entered City College of New York when I was about fifteen and a half, went off to the army when I was eighteen. Returned to City College for a semester after my period of service, which was about two and a half years, and then in 1946 entered Yale Law School and was a student here from 1946 to 1949.

BC: Let's begin with you as a student at the Yale Law School. Tell me something about what life was like here and your first impressions when you got here.

AG: Well, we were a class that was arriving at the Law School after a period of military service. The Law School had been relatively emptied out during most of the war years and then when World War II was over there were a great many students who had been in the military who came to the Law School, most on the GI Bill of Rights. We had to some extent an over-aged student body, certainly an over-experienced student body. Most of the people in my class had been in military service — I'd say 90 percent and many had been in service anywhere from two to five years and there were many who had achieved considerable rank, colonels, majors, etc. People who even though they didn't have much rank, as was my case (I'd been a sergeant) had just an extraordinary range of experience, both in the military here and abroad.

The Law School had people who reflected what seemed to me a new meritocracy which was emerging as a result of the GI Bill. We still reflected a little bit of the Yale of the pre-war years because there were many people in my class who had gone to Yale College, and many of them reflected that Yale experience in the way they dressed and the way they condescended to many of the rest of us who came from the country, the rest of the country. Certainly the Yale people emerged most quickly in classroom performance and eloquence and confidence and so on. The class pretty much divided in its sense of self, between the Yales who were a very large group, Yale College graduates, and the others. The others came, it seemed to me, from everywhere, and when I compare my own background and what I had encountered of America and the world with what I encountered at the Law School, the way I would divide it is that, until I went into the military, my background was very provincial and confined to New York City. When I went into the military I met America in a very broad sense, because I served in the infantry and in the military police, but I didn't meet very many well-educated and accomplished representatives of the broader America. I think I had something of a conceit that it would be a lot easier and the competition would be a lot easier to handle than what emerged. What I found myself surrounded with were extraordinary, able people who were not only able in the bookish sense, but very confident and experienced in the sorts of settings which I was encountering for the first time.

BC: Now, when you say that the Law School at that point was opening up to people from different backgrounds, do you see that in hindsight or is that something you perceived at the time?

AG: Oh, it was very apparent. It was very apparent at the time that places like Harvard and Yale and Princeton had not been available, either for financial reasons or for reasons of snobbery or discrimination or whatever before World War II. It was just apparent that we had people from the Midwest and the South and the Southwest to an extraordinary degree beyond what had been the Yale Law School before World War II.

BC: Did you perceive resistance? Was there a sense anywhere in the Law School that this was not a good thing?

AG: I never encountered any feelings of resistance from the faculty or my fellow students. There was perhaps awkwardness that I and others brought to some initial encounters. The only odd illustration of the problem, in a sense, came as it often does from people lower in the administrative hierarchies. The registrar, the then registrar, had clearly assigned dorm rooms to people of similar background. I don't know what her justification was.

BC: These were roommates or people living next door to each other?

AG: Well, my section of the dormitory in the Law School had virtually all Jews on that floor and it was curious. There was a classmate of mine who became in a sense a beneficiary of that classification later. His name was Wozencraft and in a contest for editor-in-chief of the Yale Law Journal later, he gathered disproportionate support from his Jewish dorm neighbors, though he was a descendant of Justice McReynolds, and Wozencraft turns out to have been a Welsh name and not a Jewish name.

BC: In the university did you or your fellow students have much to do with people outside the Law School, other students, graduate students?

AG: My sense was that the Law School was very much an enclave of its own in that period, perhaps even more than it has become since. The student body was very business-like. Having been out in the world for an extended period and so intensely, there was no appetite for frivolity of the usual student high jinx sort. People were very business-like, they worked hard. They didn't mix all that much, except to the extent that married students may have encountered students from other departments.

BC: They were business-like. What were their career expectations?

AG: Well, the world that we returned to was a world which had after all been characterized by a severe depression just before we went off to military service. So that I don't think we had very much idea what kind of a career we would find for ourselves. Certainly we didn't assume, as

students today do, that there would be hordes of law firms interviewing. The phenomenon of law firms coming here to interview simply didn't exist. We had to go with a list in hand and look for jobs.

For myself, without trying to characterize the entire student body, I assumed that I would encounter difficulty and discrimination in large law firms. I thought when I entered that I might well like to go into government service because I had an older brother who was already in the civil service in Washington, but I certainly did not have high aspirations. They were very pragmatic. I would meet each situation as it emerged.

There were no summer jobs for law students in those days. Nobody worked first summers or second summers. When you approached graduation, you got a list of law firms, and Yale-related people in those law firms, and you would call on those law firms and hoped they would interview you.

BC: Getting back to the discrimination issue just for a minute, someone mentioned to me that they had been helped by someone here at the Law School in looking for positions where there would be no discrimination. Did you run into that?

AG: Oh, I had that experience. Now, in a sense I solicited the experience because when my time came to look for a job in Wall Street, I had done very well in law school, and I had been encouraged by some of my classmates to apply to some of the major law firms and not the Jewish law firms. There were a number that were Jewish law firms and I decided I would take a flyer at the major law firms, and it was suggested to me that I might get some advice from a professor named Gulliver, Ashbel Gulliver, who had been dean of the Law School for a short period. Peyl Gulliver, P-E-Y-L, Ashbel. He was known as Peyl Gulliver, was a very warm and helpful person, and I remember his going over a list of law firms with me and suggesting to me where I might have more of a chance at getting entry than others, but that was about it. I did go in and out of a lot of law firms and eventually was told what an asset I would be to many firms, but, there was no question that there was a pattern of

discrimination against Jewish applicants in that period. I can describe it now, if you'd like.

BC: Yes, why don't you.

AG: In my class, my impression is that something like nine or ten of the people on my law review board, which was then selected by a combination of grades and writing competition, about ten of my law review board went to look for a job in Wall Street, to the so-called general law firms, not the Jewish law firms. Two of the ten got offers nearly everywhere they went and the rest of us who were Jewish either didn't get offers at all or got offers second time around or third time around, very late. One of our number, I remember, got an offer from a firm Carter, Ledyard and Milburn, which had been the law firm that Franklin Roosevelt was in, that advertised for a Jewish young man because they hadn't had a Jewish associate and they wanted to have one.

BC: Wanted to try one out.

AG: Yes. This fellow, Albert Besser, decided to go there. He'd gone to Yale College and was a little more assimilated to the idea that maybe he could make it under those circumstances. He was in that firm for several years and then eventually left.

BC: Did you keep up with him? Were you friends?

AG: Oh, yes. Sure, I know Albert Besser.

BC: He liked it?

AG: Well, I don't know. He left after a few years and became an Assistant US Attorney, and then he ended up heading a very large law firm in Newark, New Jersey. He has had a very successful career, but I've never tried to unlock the particulars of his Carter Ledyard experience.

But there were others in that group. The pattern of job offers was pretty clearly that those of us who were Jewish who came from more assimilated backgrounds, had gone to Ivy colleges rather than to City College of New York, who had names that jarred the non-Jewish ear less in that period got offers more readily. A very close friend of mine, Herbert Hansell, had a name that was not on the face of it Jewish and

he came from Salem, Ohio, a small town in Ohio and had gone to MIT. He got an offer from Cravath, but even that was second or third time around.

BC: And how did you take it? Was there anger among this group?

AG: That was a fact of life. No, that's the way life was, at least for myself. My own background was such that I didn't have high expectations. I think those of my Jewish friends who came from more affluent, more assimilated backgrounds and perhaps had higher expectations may have been shaken more by the experience. I suspect, yes, from subsequent involvement with many of them, but for myself I grew up in a working class area. Nobody expected very much; nobody had very much. You assumed the world was weighed against you, and you would have to make your way. So I expected discrimination. I knew it was there.

BC: Coming to Yale you might also have thought it would be a different experience from going to maybe NYU.

AG: Well, in the world in which I came from even NYU would have been a very considerable step up because it was a paying school. Remember I'd gone to a free school, City College of New York. There was no expectation that economic achievement would come easily, or social achievement.

BC: Let's talk a little bit about the classroom when you were a student. I'm interested to know how formal classes were.

AG: Well, I remember being struck by the Socratic method which was used here. A lot of the teachers seemed to enjoy the hidden ball or the bouncing ball technique of disclosing relatively little and thinking that the class was best taught if nothing direct was ever communicated, but there was tremendous variation. Among the flashier teachers, Wes Sturges and Ad Mueller loved to hide the ball, as they say. There were others who were more straightforward like Gene Rostow, Boris Bittker.

A lot of my classmates, particularly those who had gone to the Ivy schools, seemed to me to have had less experience with purposeful argumentation in class than I had at City. At City College there were almost no large lecture classes, and we were not taught by teaching assistants in

aid of large lecture classes at all. I now know that I was the beneficiary of a better education than I thought I was getting. A lot of public money was being spent on us, gave us small classes in which the so-called discussion method, which resembles a lot of what one now sees in law schools or hopes to see in law schools, was pervasive. I didn't find it as much of a surprise to be in constant argumentation with my fellow students and the teacher, as some of my Ivy League classmates did. I mean it was a staple of the City College experience to learn how to argue and dispute, to take hard issue with people.

BC: That was unusual. Your colleagues from both Ivy and state schools did not have that.

AG: Probably not. I now know, probably not. That we had more of the so-called small groups and classes with twenty or thirty or whatever. I found the students and the discussion in class at Yale at a very high level. I found many of my classmates were amazingly eloquent and articulate. I was quite hesitant for a while, until I felt myself adjusted to their quality, particularly in large classes. We didn't have a small group experience here in the Law School then. Most of the classes were ninety or one hundred people in a class, so that engaging in this species of argument in front of ninety or one hundred people was relatively new. The thing that struck me most was how good the Yale College stars were. I mean they brought from across the street their confidence and articulateness.

BC: They were also at home, which is a nice advantage.

AG: They were at home.

BC: Was the faculty helpful in bringing you out? Did you feel that the faculty encouraged you?

AG: We didn't look out on the world that way. Remember, we were very worldly. It never occurred to me to think I was supposed to be helped by a faculty member. In fact, I think most of us thought that we were supposed to be nice to these gentlemen who had been reading books all those years while we had been meeting the world. So it just seemed a very sweet environment.

BC: Compared to what you had come from.

AG: Well, certainly the notion of the faculty as mentors, adversaries, dominating figures, all these locutions that emerged later, couldn't have been farther from our thoughts then.

I had gone from the infantry to a demolition squad in a pioneer platoon and then was in the military police, and I was policing whore houses in France and raiding places and directing tank traffic and ended up being a counter intelligence agent and de-Nazifying. Somehow, all of that by the time I was twenty and a half, so that coming here and having nice conversations with polite people was just so agreeable.

BC: Well, that's very different from the experience of some of your colleagues who, as you say, walked across the street. Did the veterans stick together?

AG: Well, almost all of us were veterans. I mean, when I say "walked across the street," the Yale College people had gone off, usually to higher rank. I was a very young law student. Because I'd graduated from high school so young, I'd had an awful lot of experience, albeit quite young, so that when I reentered Law School I was only twenty-one. So I was still a year younger than the ordinary college graduate. Almost everybody in my class was older than me and had had at least as much military experience. It was very rare that people in my class were not in the military.

BC: What was daily life like here? Eating lunch, where did you live? How many women were in your class?

AG: There were almost no women in the class. There were five or six, though Yale Law School had admitted women going back into the early 1900s. We had women prominently known to have been our alumni, like Justine Polier and Florence Kelly, both of whom were family court judges in New York. There were very few women in and around my class. I think five or six at most. They were full participants in the life of the class. I don't remember any particular problems associated with them as students in the Law School, just as I as a Jew don't recall feeling it in any particular way.

The women, and I knew many of them well later as well as in Law School, I mean they experienced their situation in their time, but in their relations with their fellow students and with the faculty I don't think that emerged much. When they went to look for a job, whatever problems I may have had they had worse in terms of job searches.

There was a woman named Mary Jones who was a year ahead of me who was noteworthy. She came from a very social family. It was Mary Gardiner Jones and her family was – Gardiner Island and Jones Beach were named after the family. She later became a commissioner of the Federal Trade Commission. She was managing editor of the Law Journal the year before my board, and Mary could not get a job anywhere. She was a wonderful student, and she finally got a job as a personal assistant to General Donovan, the head of the Donovan Leisure firm. He had been the founder of OSS, Wild Bill Donovan, and she wrote speeches for him until eventually she got a job in the anti-trust division in New York and gradually became a member of the Federal Trade Commission. Mary applied to literally hundreds of firms with no success. Most of the women in my class went into government, but there were very few of them.

So far as the rest of life in the Law School, it was quite agreeable. The Law School dining room in that period had student waiters. It was very genteel. The dining room was run by caterers. It was not run by the University dining hall system. There were outside caterers who had been hired to run the Law School dining room. They were the same people who ran Corby Court, which was a private eating club which existed for the Law School, which did discriminate and ended discrimination soon after. That's a separate little story.

But the dining hall was lovely. The dining room was the upper part of what is now the lounge area. The part that's now dominated by counters and hardly any tables was then all tables, and the area beyond the doors where you go in to get food was then the kitchen.

BC: And what was the other big part?

AG: That was the lounge. It was a very well-furnished lounge, which

had a piano and people played bridge and hung out in the lounge. A genuine lounge.

BC: So you would go there in between classes and sit and chat.

AG: Yes, lovely furnishings, like one of the nicer common rooms that you see in the colleges, and up the steps was the dining room. In the dining room you were served by student waiters, some of whom were law students. I thought it was really quite elegant, quite nice. Later when I got married, my wife and I used to come for the steak dinner once a week to the Law School dining room.

Dances were held periodically in the Law School. They were very nice. They'd empty out the dorms. I remember I was dating the woman who later became my wife and brought her up. She was put up in a student dorm room for the weekend, and the dances were very lovely.

BC: And they included students and faculty?

AG: Well, some faculty came, but they were mostly students. The students ran it. Some faculty came to dance. The nature of the dancing in that period was waltz and fox-trot, stately. Some faculty did come.

BC: But there seemed to be, from what I've heard, some social interaction between faculty and students.

AG: Well, there's no question but that it was not so unusual for students to throw parties in their rooms and to have a faculty member or two show up. It was not so unusual. I know during the time I was a student I went to two or three parties at faculty members' homes, but it was not systematic the way the small group entertaining has become. It was more spontaneous.

The food was good in the Law School dining room. The ambience was agreeable. When I married, which was in my third term in Law School, I became a regular at an eating group that ate in what we used to call the Coke Lounge, which is now the lounge off the central corridor.

BC: Coke?

AG: Coca-Cola because machines were put in there, Coke machines. Coca-Cola machines and people who wanted to bring their lunch would gather

in that room and buy Coke and join together. We had a group that was there most days, and they tended to be a large proportion of married fellows from the Midwest, the Southwest and the far West. I may have been the only New Yorker and the only Jew among them, and that was a wonderfully agreeable addition to my experience with life because we were a perennial debating society. There were anywhere from ten or twelve others who were always arguing about everything, and I found myself often against the crowd on some issue or other. They were generally quite conservative, and I then was a lot more liberal than I am now. It was fun. We got along extremely well.

We began to have more outside social interactions as a result of that experience. My wife and I then began to socialize more with the people who were involved in that grouping.

BC: What do you think was the relationship between the brown paper sacks and being married? Was it financial?

AG: Oh, yes. Oh, sure. We were on the GI Bill. You got a certain amount for support, which was barely enough if you were unmarried. If you married they gave you twenty dollars a month extra. So there was the problem then of getting a place to live, which cost you more than it would if you were in a dorm room. Housing was very scarce in those days. We all were on the margins, but nobody seemed terribly troubled about it. Indeed, it's quite possible that it just became an attractive culture of its own and, for all I know some of the participants in the luncheon group had oodles of money.

One could never tell here who had money because it was fashionable very often for the frayed collars and the beat up suntan pants and dirty shoes to be worn by those who were easiest in their environment. So one began to correlate affluence with apparent indigence. [laughs]

BC: The workload, the class workload?

AG: I didn't find it a heavy workload. I did a tremendous amount of reading on my own, but I didn't find class work particularly burdensome. Early on I did compete for the Law Journal and I did write both a

note and a comment which were published, and I became articles editor of the Journal, so that the workload was likely to have been more either self-imposed through the reading that I was doing above and beyond what was in the class assignments and in the work, my own writing for the Journal, and then editing for the Journal.

BC: Can you talk a little bit about the Journal, how it was run and the ambience of it?

AG: Well, again, it was very meritocratic. You were invited to compete for the Journal in my time on the basis of grades. If you were in the top 10 percent of the class you were invited after your first term. If you were in the top 15 percent you were added after your second term, and that was it. So a relatively small number of people were invited to compete. Let's say fifteen to eighteen people and then you had to have your writing approved by the board before you could be elected to the Journal. So it was a double whammy. Many schools – I think Harvard at the time – if you had the right grades you were on the Journal. With us it was the combination of grade qualification and then a competition.

There were two members of my class who did not make it, and it was quite crushing to them because they were very high ranking students. But the board took its responsibilities maybe overly seriously, I don't know, but it was very meritocratic, and people felt very much in charge of themselves and their publication.

I remember when I was articles editor a faculty member tried to pressure me into publishing something that had been submitted by a former student who was out and teaching somewhere, and I said, "No, I don't think so." He was angry with me, and I faced him down. There was a sense that we were very much in charge and I think that was accentuated by our experience, world experience, age. For most of us the notion that we could be pushed around just didn't signify.

BC: It was a good experience?

AG: I thought it was a wonderful experience. It was a very important experience in responsible scholarship, responsible administra-

tion. We ran a very good ship. People worked hard. Not only did you have to write, but we did the source checking, and we did all sorts of projects and symposia and things like that. Yes, I thought it was a wonderful experience.

BC: And the Law School was supportive of it?

AG: Oh, well, it was the merit badge par excellence, not only in the Law School but in the world. Remember, there were no other journals. Of the student activities this was it. There was Moot Court and there was Barrister's Union, there was Legal Aid Society, but the Law Journal was by common consent the peer group. The acme, shall we say, of achievement. If you became an editing officer of the Journal that became an important credential.

Although I must say that when we think of credentials by comparison to today, we didn't have lots of clerkships waiting in the wings. The law clerkship hardly existed by comparison with today. Very few of us went on to clerkships. There were a handful of Supreme Court possibilities. There was the Second Circuit, certain judges who were identified with Yale like Charles Clark and Tom Swan and Jerry Frank, but that was about it. As a result, a very small number of my class – even of the very best students – went on to clerkships.

I ended up becoming a law clerk after having practiced almost a year in Washington. I was a first law clerk to a then newly appointed Federal Judge, but when I left Law School it was not to a clerkship. The Journal was not perceived as necessarily a credential to get you a prize clerkship, though of course if you could get one of the Supreme Court clerkships, the three or four, a high Journal office would certainly facilitate that.

But the main thing that happened to you as a result of the Journal experience was you would usually get preference in the competition for the choice Wall Street law firms or the Washington law firms.

BC: I see. Did you have friends or colleagues who went into teaching, legal scholarship?

AG: Directly? That was virtually again nonexistent. Bear in mind that the

great expansion of the law schools did not really take place until the legal profession began to expand, which was after the Korean emergency in the 1950s. We were the first major law school, to my knowledge, that had a dramatic expansion. That was in the mid 1950s and there then followed other schools getting larger and the creation of lots of new schools, state and private law schools around the country. But in that period – 1949 – the law teaching field was a relative rarity. There were a handful of major law schools. The faculty was coming back or they had an accumulation of people from prior generations who were there to be picked up again.

The Yale Law School did have a number of new people who greeted me and my class. There was Boris Bittker, Ralph Brown, David Haber, George Braden. But virtually nobody in my class interviewed for a law teaching job. I remember two law schools coming to the Law School to interview people. The University of Iowa, Mason Ladd, who was then the dean of Iowa Law School. I remember some of my Jewish classmates interviewed and reported back that he had said, well, he didn't know whether he could have room for a Jew that year, but maybe Hillel would need a faculty advisor. Then there was some possibility of a job at the University of North Carolina Law School. They had an Institute of Government and there was a man named Albert Coates who came up to interview people here, but that was it.

Most of us went to law firms, a handful to clerkships and that's pretty much it.

BC: Do some faculty members stand out for you?

AG: Well, I thought Gene Rostow was a very winning teacher. I liked him a lot. Gulliver was an unusually good teacher, had published very little but was a warm and engaging teacher. Rostow just seemed very accomplished, very well educated, good in the classroom.

It was all agreeable, but I don't have a recollection of feeling bedazzled by the teaching.

BC: Well, let's move forward a little bit. You graduated and took a job, clerked.

AG: Yes, as a matter of fact, I did not get a job on Wall Street and then looked for a job in Washington, and Boris Bittker sent me to see a man for whom he worked in government, named Raoul Berger, who subsequently became famous. I was hired by Raoul Berger and a partner of his, a man named Donald Cook who later was chairman of the SEC, as their first associate. Law firms were very small in those days, you've got to remember that.

In Washington, Covington and Burling was the largest firm and had about thirty-five lawyers. Arnold and Porter had twelve lawyers. Lloyd Cutler had just formed his law firm with some others. He was the junior member, and I think there were six to eight members. You didn't just sail in. Even the Wall Street firms were not all that big compared to what they are now, but the Washington firms were very small. So that getting a job in Washington was not easy.

BC: Okay, Raoul Berger.

AG: Boris sent me to see Raoul Berger, a very colorful fellow. He'd been concert master of the Cincinnati Symphony, a violinist for the Philadelphia Symphony and quite a character. He was a scholar lawyer and he led me into a small office where he made the offer to me and he said, "Lad," he spoke in this very throaty way, "Don and I recognize in you a remarkable capacity for growth," and he pointed me to the largest bottomed desk chair I've ever seen.

So I went to work for Raoul, and I got on very well with him and Don Cook, but a few months after I got there Raoul came in to see me and said their great and good friend, David Bazelon, had been appointed a federal judge. Raoul had been general counsel of the Office of Alien Property, and Don had been the director of it. Bazelon was a successor director of the Office of Alien Property and an assistant attorney general. Dave he said had asked him for assistance in finding a law clerk because this was out of season, and would I be interested in serving the law firm by helping out this new judge for a while until he could get properly set up? I said, "Shucks, gee whiz, I don't know," and I wasn't much inclined to do it.

BC: How long had you been with them at this point?

AG: Six months and I was enjoying it. Raoul and I had published an article together on the Robinson Patman Act, and it looked like a nice place, beautiful offices. He sent me over to see the judge. Well, Bazelon was still an assistant attorney general. He had just been designated a judge, and I was interviewed by him, and he offered me the job and I took it, ostensibly until the following summer. Then I was to go back to the law firm, but once I got into the job — he was thirty-nine years old, I was twenty-five years old — he was very ambitious. I enjoyed helping him become a judge, and he was very open about his desire for assistance and very appreciative of what he felt I was doing for him and with him and wanted me to stay on a second year. So I told Raoul that I would not return, and he was rather annoyed with Dave because Dave had wooed me away, but it was really an independent judgment. I found the clerkship very exciting and fulfilling.

BC: And you never did go back.

AG: I did not go back. I left the clerkship after I served I guess it was about a year and three quarters, and I went into another law firm as a partner, a small law firm named Donohue and Kaufman, which was headed by a man, F. Joseph Donohue, who later was president of the Board of Commissioners of the District of Columbia, which is like the mayor. He was a well-known local trial lawyer, and he and I did a lot of complex litigation together for about five years.

BC: Until?

AG: Until 1956, September 1956.

BC: And then how did it happen that you came here?

AG: Well, one of the contributions I made to Dave Bazelon, who became a very important figure on the judicial scene and among the most famous and successful of the circuit judges, was I persuaded him that he would be well advised to get a law clerk from the Yale Law School each year. He was a graduate of Northwestern, and I urged him to get somebody who had been an editing officer of the Yale Law Journal because they would

come ready to go. In those days you had only one law clerk, so it was important who your law clerk was. You didn't have depth of troops. I helped him pick his law clerks each year while I was in practice, and they were always editing officers of the Yale Law Journal, until later when Alan Dershowitz — of Harvard's faculty — joined the selection process. By then there were two law clerks and there would be a Harvard law clerk and a Yale law clerk to Bazelon.

In any event, early on, Joe Goldstein emerged as an applicant for the Bazelon clerkship. I hadn't known Joe before. I was practicing law, but I was basically assisting the judge in choosing his clerks and I got to know Joe who emerged as the judge's third law clerk. When Joe finished his clerkship he went directly into teaching at Stanford and was waiting to begin at Stanford and had time, a few months or whatever, and he ended up among other things, doing some work for me. I was handling some very important litigation — U.S. v. Lorwin — a famous case arising out of the loyalty program, the McCarthy loyalty program. Joe did some memoranda for me, we had that working relationship. He went off to Stanford and I continued to practice law. A few years later Joe came through Washington. Joe and his family stayed with us. We were then living in Maryland, and he was returning to Yale Law School to begin his teaching here. While he was with us, I'd gotten a little restless in my law firm, and I was considering a job offer with the Solicitor General's office at the time, and Joe asked me whether I might have any interest in teaching. It happens that I had taught one course at night at American University in jurisprudence and I said, "Well, I might consider it. I don't know." Joe went back to New Haven — this was during the summer of 1956 — and shortly thereafter I got a phone call from Gene Rostow asking me if I'd like to come up for an interview.

I did go for an interview and was offered a job within about a week or two. I was interviewed here that summer and began in September of 1956. It was the fastest job offer imaginable. Our processes were a good deal less ponderous than they seem to have become.

BC: That was a quick decision.

AG: So I then came to Yale Law School. That's how I got to Yale Law School. I don't think I was a natural prospect for the faculty. I mean I had certain credentials. I had a relatively high class standing, but I was not one of the very top of my class, but I was a high ranking officer of the Law Journal. But my career outside had apparently signified. Bazelon was regarded as a political figure, and suddenly he emerged as a star, one of the new constellation of liberal judges, and I was given a lot of credit for that by some people, at least in Washington, who were Gene Rostow's sources of referral. Gene was supplied with a lot of names of people in Washington and New York who would be prime candidates. Leon Lipson was one of them. There were a whole bunch of us, also Alex Bickel, that came from different places, and I was one of the Yale people who emerged from the Washington list.

I gather that Joe's recommendation of me concurred, as I later learned, with my already having been noted. Also, this case that Joe worked with me on was a case that was known to people here. It involved a man named Val Lorwin who had been a professor at the University of Chicago, and he was a close friend of Bob Dahl.

BC: Who was here already?

AG: Yes, and money was being raised to pay us for representing Val Lorwin. It was a very hot case in its time.

BC: Can you talk a little bit about that?

AG: Oh, sure. I think that made some people here aware that I was a somebody who had been doing things rather differently. I was managing major litigation, really big cases and carrying a level of responsibility which, when I look back on it, in law firms today would be handled by platoons of people, but you know they were small law firms, and I was hiring people to do piece work because we were a small law firm. But we had lots of important cases, libel cases and income tax evasion, anti-trust. This was a false statement case of denying membership in the Communist Party.

BC: There must have been a number of those around at that time.

AG: Yes, there were. When I was interviewed here, I remember clearly it was one of these things where I was regaling them with stories which they seemed to enjoy, the faculty. We were sitting around in Mory's upstairs.

BC: Stories about your work?

AG: About what I was doing because what I was doing was very different. In that period people didn't say, "What are you planning to write?" They took you for what you were, which was a practitioner who had a few years ago gotten good grades and been a lawyer, but in the meantime had been living a life and a profession, and apparently I did well in that interview.

BC: Well, you had been away for seven years.

AG: Yes, almost seven years.

BC: What were your impressions when you came back after seven years?

AG: Well, it was an odd experience. I resigned a few months after I got here. I made the break too quickly from there to here. A friend of mine, Irving Janis, wrote a book called *Psychological Stress*, which explores the concept of the work of worrying, post traumatic neurosis of surgical patients. He did some comparisons between people who had done the work of worrying beforehand and those who had not, as to whether they had post-surgery neurosis. Apparently, if you do the work of worrying well beforehand, it's okay. I hadn't done the work of worrying.

BC: You only had a week.

AG: The offer sort of emerged and I said, "Let's do it," and I came and no sooner had I come than I began regrettably counting the money I was losing. When I came here, I was making about forty thousand dollars a year in Washington and I came here for thirteen, which was then a very high salary. The high was fifteen thousand I think, and Gene was recruiting people from practice – I was not the only one – and then offering this salary that was near the ceiling of the people who were already in. But it was that low. It wasn't really low. I mean fifteen thousand was a lot of money.

BC: But the difference was a big difference.

AG: Yes. In any event, I suddenly realized that I'd given something up, and I was in the classroom, I was teaching evidence at the time and talking about problems and cases of the sort that I'd just been handling. Somehow I had difficulty settling in, and so I told Gene that I would leave at the end of the term.

BC: Your first term?

AG: Or was it the end of the year. I forget, but I made arrangements to return to my law firm, and I put a deposit down on a house in Washington which Dan Freed later bought from me. I never was in it, but he was.

Gene had a tendency to — you probably don't know him, but he was known as "Smiling Gene" and tended to "ho-ho" people in a very jocular manner. He would laugh agreeably and say, "You don't mean that." "Oh, Gene, I do and I'm making preparations." In any event, he seemed to assume that I might come around. He proved right because by the time I got to the end of the first term I had decided that maybe I'd like it after all, and so I decided to stay. I lost the deposit on the house in Washington and stayed. I had that kind of internal turmoil about the decision.

BC: What was the time period between the time when you were thinking you might leave and the time you decided to stay?

AG: Probably three months. My recollection is that I suddenly began to teach for the ages. I suddenly thought of myself as leaving and felt that there were things I ought to be saying to my class which I had not been saying before. I think I loosened up and opened up and heard myself and pronounced it good. [laughs] It was better than it had seemed before when perhaps I was just a little too compulsive about the classroom situation.

BC: Well, maybe it was the decision-making process, too.

AG: Yes. Yes, I think so. I think Janis has something there.

BC: What was it like being a faculty member then in the first few years? Colleagues?

AG: We were an unusually interesting group. About fourteen people had been hired in the 1955-1956 period. That's just extraordinary.

BC: It is because the size of the faculty was small?

AG: Had been reduced to nineteen.

BC: So it was almost half.

AG: This is very important for subsequent discussions — we came to the Law School against the background of many denials of tenure, departures. That figure of nineteen reflected people who had been turned down for tenure, hadn't been promoted, had developed problems of various sorts. We didn't assume when we came that there would be an automatic movement to tenure. I think we assumed, I certainly assumed, it would be competitive and that I might not end up at Yale.

The group came from Harvard and Yale mostly, though there were others who had been in teaching for a while like Clyde Summers and Quintin Johnstone. Charles Black of course came as an already tenured person. There were some who were already tenured, but most were not. The age range was considerable from Ellen Peters who was I think twenty-seven, Harry Wellington, a little older. I was I guess the third youngest of the group. People like Ward Bowman and Frank Coker were considerably older.

BC: I've heard comments about this period that I think are not correct, but there is a perception that the greater number of people hired during that time came from Harvard, and that doesn't seem to be the case. Although I've heard comments —

AG: It was a much larger number than had ever come from Harvard before. The Law School had tended not to hire anybody from Harvard. It had been very parochial. I think apart from Harry Shulman, was there anybody in the recent past that had been a Harvard graduate? I'm not sure. In my group, we could go down the list, but Alex Bickel, Harry Wellington, Leon Lipson, and Joe Bishop, I think, were the only Harvards. Quintin Johnstone had gone to the University of Chicago. Clyde Summers had gone to, I think, Illinois. Charles Black was one of our graduates. Frank Coker, Bay Manning, Joe Goldstein, me, Ellen Peters, all Yale.

BC: That's interesting because I've heard this from several people and...

AG: There was a common criticism of Gene Rostow among certain people

who were hostile to him at that time, particularly Fred Rodell was spouting this nonsense and marketing it to Bill Douglas and Thurman Arnold and people, that Gene was Harvardizing the Yale Law School.

BC: That's right. That's what I've heard.

AG: It's ridiculous. Those people were notoriously unreliable in these matters. Alex was a powerful force himself, Alex Bickel. So that if you count the intensity of influence, they accounted for two or three times the number, but no the figure is wrong.

BC: It was a congenial group? Did you tend to associate with the newer people?

AG: It was unusually nice. Because the faculty was small, I don't know how cohesive they felt themselves, but they had the capacity to receive us as if we could all get to know one another. There wasn't by and large this feeling that people often take. They feel immunized by being members of a large group, not feeling obligated to have anything to do with each other. You know, the anonymity of the large group has to be contrasted with nineteen or twenty people receiving a new group of people.

They were very receptive. It's really quite extraordinary when I think back on it and compare it to subsequent generations. The traditions of that period included socializing. Spouses didn't feel themselves aggrieved by having to entertain. Entertaining, family entertaining was a staple. They were very warm in receiving us. We socialized a lot among one another in the early years. There was a lot of interaction, both social and intellectual.

There was a lot of fierce argumentation. I remember in the early years the Harvards versus the Yales, at least those who were willing to argue with one another. It often did take on that coloration. I remember doing battle often with Harry Wellington and Alex Bickel. They became quite good friends of mine but they were Harvards and I was a specimen Yale, and they had clerked for Frankfurter and had some of the coloration of that period of being more conservative. I had clerked for Dave Bazelon who had a reputation as a radical judge of that period. For whatever the

reason, we had a lot to do with each other, argued a lot and enjoyed each other a lot as time went on.

BC: This was the waning of the McCarthy era. Was that a topic? Was that something to argue about or was everybody pretty much single-minded?

AG: No, I think that was pretty much gone. That was not there for a number of us on the faculty who had experience with it in Washington. Leon Lipson and I had had direct experience with some of those issues, but I don't think it was important here.

Tom Emerson was on the faculty and he was regarded as having been a radical. Fowler Harper was here. He was regarded as having been a radical. Fowler was very warm and friendly. Tom always seemed to keep his distance from me. I don't know why.

But I don't remember it being an important factor. It was post Countryman. See, whatever issues were associated with Countryman and his denial of tenure pre-dated the arrival of this twelve to fourteen people. There was some —

BC: Was the Countryman affair a topic of conversation?

AG: Well, people would talk about it to us now and then, but not centrally.

BC: What was your impression of that?

AG: I didn't know Countryman. He came to the Law School after I graduated and had left by the time I returned. I knew of it only as an alumnus in Washington, and I didn't know enough to take sides.

BC: As a new member of the faculty, you felt fully involved in decision making, tenure decisions, appointments?

AG: Oh, certainly not tenure decisions. I mean we didn't have tenure, so there was this large number of us, about a dozen of us. Gene Rostow and the faculty soon gave us evidence that they were very pleased with this hiring. Though as I said earlier, I thought we'd have to compete for place, they decided, the then governing board of tenured professors, decided to move us all forward together, which was really quite remarkable. A decision was made that all of us would have tenure, and then they phased it over a three year period for administrative pur-

poses. Some arrangement was made with the provost to stagger the appointments.

Apparently there was a feeling that we had renewed, revitalized or whatever, the faculty. We were in a sense an augmented faculty because our age range, our experience range, our subject matter range, to put alongside the nineteen, you suddenly had the fifteen and behold, you had a really rounded faculty.

BC: How many years after coming did the first group have tenure?

AG: Oh, I don't know. Three to five years. Within three to five years we all had tenure.

BC: That was quick.

AG: Yes, and that can be criticized in retrospect when you look at the publications: some published more, some published less during that period. There may have been more reliance on promise of some than in retrospect was deserved.

BC: I'm assuming that would have been unusual in the university outside the Law School.

AG: The Law School had tremendous independence and was allowed to have independence. Gene, as it appeared to us, had very good relations with the president of the university and with the then provost. We had the sense that he and Whit Griswold were very close and that Whit Griswold had pretty much given him a blank check, particularly in the post Countryman and post Shulman period. Shulman died suddenly. The Countryman thing had left scars, and I think they felt it was important to let the school move.

BC: Talk about Gene Rostow.

AG: As far as participation was concerned, Gene's style was very open and inviting. He was a leader without being an authoritarian and he elicited very broad participation from us on committees, and he expected his committees to work and to do things. We had a quick sense of genuine participation in the life of the school. It was a faculty-run school, very much so. We didn't have student participation then, and so we didn't

have to worry about that problem. The faculty ran the school. There was broad participation. Gene shared knowledge and power very well.

BC: What did you teach when you first came?

AG: In talking about teaching when Gene hired me, he asked me what I would like to teach and I said, "Well, I'd like to teach in the criminal law area." He said there was one course he would appreciate it if I would teach, at least for a fair number of years, and that was evidence because I'd had a fair amount of experience as a trial lawyer, and we needed that course. I said, "Fine, I'll do it." He said, "Well, okay, you teach evidence and then you pick up three other things. You'll do criminal law and evidence and a couple seminars and that will be it. You can devise the seminars as you like," and that's the way it evolved.

We then did have a divisional program, and I worked in two divisions. One was the procedure and advocacy division with Fleming James and the other was a division which went by different names different times. It was basically the criminal law people. Sometimes it was called the law and behavioral sciences division, sometimes it was called the social relations division. I participated in the divisional work and my seminars were related to that, and I taught evidence and criminal law.

BC: Did you think the divisional program was a good idea?

AG: Well, when I first came, of course, it existed and we were hired for it and hired for the small group program, though I didn't teach in the first term. So I was not in the small group program. I taught evidence, which was a big course in those days. It was given each term and I would usually get anywhere from seventy-five to ninety-five or one hundred people in it. Criminal law was taught in three sections in the second term. We didn't let students opt for people because it was a required course. The office, the registrar, simply divided it into three sections, and I taught a section of criminal law. It changed later, but that's what it was then.

I thought the divisional program sounded like a very interesting idea and in the early years of it, it seemed to work marvelously well in

harnessing the energies of students and getting us involved with each other, and with the students.

BC: What happened?

AG: There were problems of distribution because there were a certain number of divisions and we invited students to sign up for divisions. We'd have unequal sign ups. The popularity of the division didn't necessarily correlate with the numbers of faculty available to teach in it.

BC: So some people worked harder than other people.

AG: Yes, sometimes hugely. Also, sometimes there was total incapacity for servicing the division in accordance with their original assumption. In corporations, whether they were popular or not, students had felt a need in disproportionate numbers to go into the corporations division because they thought that was more of a ticket to jobs, even though we told them they shouldn't do it that way. You'd get fifty people signing up for corporations division, and you had two or three people to teach them and develop seminars for them. It was just out of whack.

We did a lot of tinkering over the years with the divisions and I was heavily involved in the tinkering. At the end of Gene Rostow's first term there was a feeling that he was losing interest in what was going on in the Law School, and was developing more of an interest in the greater world outside. He was urged by some – I think Alex Bickel among others – to appoint a long range educational planning committee to review the curriculum, and I was chairman of that committee, first under Gene. Then for many of the subsequent years I was on it or chaired it. Under Lou Pollak I chaired or was on it. All this tinkering with the divisional program was very much something I was familiar with.

BC: Was it controversial?

AG: Oh, yes. As we made proposals for change there was a lot of controversy. Some people loved the divisional program and others resented it, and it did make for disproportionate workload.

BC: But the small groups survived.

AG: Small groups were never questioned as a successful venture. Their

mission has changed from time to time. The way they have come to be administered has changed from time to time. We have the institution of the small group with a teaching assistant and the legal research as an adjunct thereof, but the way in which it's been handled has changed.

BC: In your opinion, is it better or worse?

AG: Well, one thing that happened, for example, through the years was that most of the small group instructors began to have their legal research pointed towards a Moot Court exercise. That followed in the wake of the abolition of Moot Court, I guess. Moot Court used to be the one required forensic activity. Every student had to take Moot Court, write a brief, make an appellate argument. That was changed as a result of some of the work of this long range educational policy committee; students could elect either Moot Court or Barrister's Union or Legislative Workshop or Legal Aid. As those options were made available, more and more students did not have the experience of briefing and arguing, and some of the teachers of the small groups decided to substitute for the conventional memo-writing exercises which had been pervasive, and have Moot Courts within the small group. That I gather has carried the day. It just sort of evolved.

BC: Yes, that's right. You mentioned earlier some criticism of Rostow, maybe after his first term. Did it form itself into a group, an identifiable group or an identifiable issue?

AG: No, I think it was more the feeling on the part of some that he was beginning to neglect the Law School and speaking out too often on too many issues, looking to make himself into a figure in the larger world. It's always that way. You want deans to figure in the larger world, and you also want them to run a tight ship at home. The ship he had run at home was a very good ship, and he was responsible for all sorts of initiatives, both administrative and curricular, and came up with lots of interesting appointments. As his interest in that inside work seemed to decline, people criticized him but it didn't form into factions around ideology, for example. That certainly didn't emerge.

There was one major episode in Gene's administration that provoked a lot of conflict. That was around his effort to facilitate Myres McDougal's ventures. Grant Gilmore ended up leaving. I don't think Gene was all that much an enthusiast for the McDougal activities, but McDougal and Lasswell were important players, and they got a very generous offer from Cornell. As I recall, it would have permitted them to get tenured positions for some people who were research associates here and create a de facto institute at Cornell. It was thought that Gene was trying to create an analog of that here at Yale Law School in order to keep them, and there was much resentment by a number of people. The leading figure in opposition was Grant Gilmore. Boris was opposed to it.

We were then newly tenured people. We were generally supportive of Grant, I'd say. Most of the more articulate members of my group were opposed to the McDougal-Lasswell institute idea. But there was a lot of back and forth, ending up with Grant pretty much carrying the day in defeating the fullest extent of what Gene seemed to be willing to do for McDougal. So McDougal and Lasswell stayed, and they didn't get everything they wanted. But Grant somewhere along the line had vowed to leave if some vote didn't go his way, and lo and behold he did.

BC: My understanding of some of that controversy was that there was some disagreement about the size and influence of the graduate program. That the JD program was being not so much undermined, but at least not given as much attention because of the size of the graduate program. Was that part of it?

AG: Well, that's part of it. The graduate program had gotten very large, in part because of the moneys that Gene had attracted to the school, Gene and others. We had lots of money from the Ford Foundation, AID, and other sources that funded these foreign graduate students, and McDougal was wonderfully accommodating to those people. It was felt that there were more than there ought to be and they weren't properly supervised. They were getting second class degrees, and they were being indoctrinated by Lasswell and McDougal in the law and policy science.

Whatever the merits of all of that, it was giving tenure to satellite figures that was most resented, and resources to provide for more appointments of that sort, I think was the flash point.

BC: It strikes me that McDougal was a powerful member of the faculty, and a leader in many ways.

AG: Not any more. By the time –

BC: Not at that time?

AG: No, he was influential perhaps before we arrived on the scene. He remained in charge of his fiefdom, but I think with the arrival of all of us I think Mac sort of receded, except in a zone of influence perhaps on Gene and on particular individuals. But he was not a powerful force in relation, for example, to Gilmore or to Black or to Bittker, who were among the major new figures who were older than us.

As far as we were concerned – in fact, here’s a touching story. When I became dean, Mac came to me and said, “You know, Abe, I don’t have any influence around here anymore. Michael Reisman is the best person I ever had working for me, and I can’t get anybody to give him a look, I talked to Lou Pollak who was then dean and he just won’t pay any attention to my recommendation.” Lou was doing that because his then appointments committee was by and large negative about McDougal’s suggestions, and that had been the case for a long time. The appointments committee had stopped paying much attention to Mac because he was regarded as so doctrinaire. He was a man of personal force, but not great influence anymore.

Second Interview, October 23, 1996

BC: Let's start out talking about the 1960s, particularly the student unrest problems in the Law School as they developed.

AG: Well, Dean Pollak's term, which began in 1965 began quietly. The major issues, as I recall them, were financial in nature at the beginning. He was being squeezed by the central administration to spend less, save more money. That reflected itself now and then in some conflicts within the faculty about expense items. It was not important in any long range sense, but beginning in I would say 1967, probably, we began to experience some major conflicts, major issues.

So far as what had happened along the way before we hit the major issues, there was a good deal of carping about the divisional program and the burdens it was putting on faculty, and the divisional program gradually was displaced by something called the senior studies program, which was less elaborately structured, less of a major and more of a paper-writing program. That gradually was replaced by what we now have, which is the two writing requirements for graduation. That made for lots of faculty meetings and lots of disputation.

There were also periodic discussions about grading systems and changes here and there, now and then, before we got to what is our current grading system. There were the usual concerns about curriculum and about programs of various sorts. Among the things that began to be considered in 1967 or so were changes in our clinical programs. Should we have more of them? Should they be supervised by faculty or quasi-faculty and we can get back to that area if you want to, but just locating it chronologically, that's what was going on in terms of long range educational planning at that time.

We also became more and more conscious that we needed, as the divisional program began to give way, that we had to continue to provide so-called advance offerings, "law and" type things for people who were coming to us especially well qualified in economics or political science or social science.

But then the student unrest issues, I suppose, as nearly as I can recall them, beginning in 1967 or 1968, but over that period of 1967-1970 we experienced a series of quite intense pressures from the larger world that had to do with the emergence of black nationalist outlooks among black students. There came into the Law School some black students who no longer shared the integrationist approach that had characterized most of the black students we'd had in the school up to then. Suddenly there were issues and conflicts that we experienced before other law schools did around those themes. I'll come back to that in a moment.

The counter culture was expressing itself around the country. Hip-pies, pot, challenges to the conventional senses of dress and order and decorum and career lines and so on. More often we began to hear questions about why we were programming people for Wall Street. I remember a period somewhere in 1968 perhaps I was chairman of Dean Pollak's long range educational planning committee. I was teaching a class in criminal procedure, a large class with seventy-five or eighty students, and there was somebody in the class who in the midst of some period of challenge and controversy wanted to know whether we could take a few minutes to talk about the curriculum, and I said, "Sure. I don't like to do this, but since you seem all charged up, let's take a few minutes and talk about the curriculum." I was asked why we were programming the students for Wall Street. I said I didn't quite understand what they meant by that. "Well," they said, "the courses in the financial fields and corporations and taxation and bankruptcy and so on were so much better than the courses in urban studies." We had an elaborate urban studies program at the time that had been funded by the Ford Foundation.

BC: Better, meaning, what?

AG: Better organized, better taught, more intricate. The materials were better. I remember saying, "You don't quite understand that it may take generations to develop bodies of doctrine and institutions and materials to teach all about those doctrines and those institutions. Here we have been innovative. We've stepped out to develop a curriculum in urban

studies with the aid of the Ford Foundation in a new and uncharted area, and you're not willing to pay with your lives a little bit in sharing the developmental stages of that curriculum with us. It was the kind of discussion which then began to occur more often than previously, as student disquiet began to express itself.

There were themes coming from the counter culture, from the more general emergence of radicalism that later began to get names like SDS and others. We began to feel it. We had also the emergence of anti-war protests as the Vietnam War continued and there was a general challenge to authority. All of those began to have an impact on our lives in the Law School and interacted one with the other with overlapping constituencies, some of which shared one of these causes, but others embraced them all and felt that we on the faculty represented some monolithic resisting force.

BC: What was the faculty's response? The faculty didn't respond in a single voice, I'm sure.

AG: Of course, no. There was no way to respond in a single voice. Usually these issues found their way into various committees or various initiatives the student groups took or the dean took or faculty committees took. So we have to look at them one by one. The general counter culture theme, if you will, reflected itself in pressures for more student participation in the governance of the Law School and in changes in the grading system, so that we would stop being so elitist. There were people around who attacked the grading system as elitist, and the Socratic method as well.

Duncan Kennedy, who later emerged as an enfant terrible on the Harvard Law School faculty, was then a student here. He wrote an article called "Why the Yale Law School Fails," in which he basically accused us of the faculty of aggressing against students, crushing their spirits and their creativity.

So there were these initiatives that emerged that were referred to committees of various sorts, and if one charts the history of the Law School, one sees out of this period and out of the counter culture influ-

ences the emergence of our present grading system. It was in 1969 that the current grading system was adopted. It was proposed that we have simply a credit/fail system across the board by the then dominant student groups that I've tried to describe. There emerged out of committee something called a pass/fail system and eventually we ended up with a credit/fail for the first term alone and then an honors pass, low pass, and fail for the rest. That system passed by one vote. I remember very clearly.

BC: Is that right?

AG: A very narrow and hotly contested set of votes.

BC: Has that come up since?

AG: I don't think so. I think it was one of those things. Many of the things that happened in that period were associated with bruising recollections of the controversies. As often happens, when you're at a great cultural divide, the student controversies began to pick up alliances among different faculty groups and some of the debates became very intense and made this a very difficult place to live in for a while because everybody was arguing so much about everything.

Grading, student participation, governance illustrate the counter culture influence. Admissions, of course, was the major target of the newly emerging Black Law Students Union, and we had some quite searing meetings and controversies and clashes with students and among each other on that subject.

BC: Would you say that it's in admissions that the major changes have taken place and been maintained?

AG: Oh, I think almost everything we did then has been pretty much maintained in some form or other with modifications. We still have the same pattern of student participation and governance of the school. The students are entitled under a code to participate in enumerated committees. We fought against their participation, except in an advisory way, on appointments matters and prevailed on that and held the line, but on most other things that involved general policy making, students were

given a voice. Admissions, students were given a general policy voice, but not a decision making voice on individual applications, on admissions at that time. Would you like to go into that now?

BC: Yes.

AG: On admissions, the precipitating issue came sometime I think it was 1967, perhaps it was 1968. We had admitted several black students, as I said earlier, who were black nationalists in orientation. We then had a president of the Yale Law Student Association who was a black named Larry Palmer, who now I think is associate provost or deputy provost at Cornell, and was a professor of law at Cornell. Larry had come out of Harvard College and he was very much part of the earlier circumstance of integrated black students. I mean, we'd had many very successful black students before that period. People like Drew Days and Lani Guinier and Hugh Price and lots of others. We're now talking about a few years later.

BC: Critical years, though.

AG: Yes. Suddenly there emerged somebody named Jeroyd Green and some others, I'm blocking on the names, who challenged some of the older integrationist views and also called attention to the fact that we did not have as many black students as they thought we ought to have coming into the next class. A meeting was held, the faculty, I think it was in 1967, but it could have been 1968, after the usual admissions season had ended, in which Dean Pollak told us that we had only X number of black students and – I forget the number exactly, but a relatively small number coming in – and he had been persuaded by some of these other students that there were out there lots of very well qualified black students that our processes were not producing because we weren't recruiting in the right places. What later came to be the usual points were made. They were made early then and were relatively unfamiliar to us. He asked for leave to admit a certain number of additional black students and to let our admissions process continue for a period of time, another month or so, to see whether by recruiting more aggressively on campuses where we hadn't recruited before, we would get more qualified black students.

He told us that the admissions office would use the usual criteria in order to develop a larger number of black applicants.

We authorized him to admit no more than a certain additional number. I forget how many there were, and there emerged in the Law School as a result of that process and that authorization, in the next academic year – possibly 1968, but it could have been 1969 – more black students. Many of those black students, many of us felt, were not as well qualified as had been our custom to get. They did come, many of them, from campuses with which we weren't familiar, and it seemed clear to us that whatever process had been used by the admissions office to get those new black applicants and get them admitted, was perhaps to rely on criteria that were not the same as had been used before. Interviewing more, giving heavier emphasis to community activity, these processes are not known in detail by the faculty as a whole, but there emerged what looked to many of us like students who were only marginally qualified to do the work.

BC: Was that a controversial decision, to go out and find more black students or to at least extend the deadline?

AG: At the beginning of things it was not terribly controversial because remember, this was an entirely new matter, a total shift in the way in which we were asked to look out at the world. We were being told at that time that there had been lots of failures of recruitment and that what later came to be referred to as affirmative action meant that, if you'd just go out and look, you would find that there were hoards of very well qualified people. We had but to find them and persuade them to come and make financial aid available.

So in a spirit which I think had characterized the school by my knowledge, a spirit of generosity, a spirit of trying to do the right thing, the faculty endorsed the dean's recommendation to give it another shot, and it was short term, one time only. Let's see what happens. No, at that point I don't think there was huge, there was not controversy. There was some concern because we didn't quite know, but we also at that time thought

we knew a lot more about a lot of things than it turned out we did. We assumed that these generous impulses would quickly bear fruit.

Come fall, we saw what had come, and it seemed to many of us that a goodly number of these students were having trouble or would have trouble. Some of us taught them in the very first year and could see the trouble coming. Also associated with the trouble was the new spirit of conflict that many of these students brought with them from the community or the new culture of black separateness. Whatever it was, we had a year or so of obvious trouble adapting to this new group of students and having them adapt to the school.

BC: How did the faculty react?

AG: That led to extended discussions about what our policy should be regarding minority admissions. That policy was very much affected by the emergence of the Black Law Students Union. You see, as the numbers increased, and as the sense of black separateness increased, a lot of these students formed themselves into the Black Law Students Union and wanted to separate themselves from our then existing Yale Law Students Association and other more general entities that we had. One of their major agenda items was to admit more black students, at least as many as we had admitted and certainly to continue what we had done. The faculty found itself appraising what it had done, asking whether it should continue to be done, whether some other approach should be adopted to the problem of minority admissions.

Somewhere along the line we were presented with demands by the Black Law Students Union, a list of numbers that should be admitted, embracing a kind of a Third World philosophy. When they talked about admitting minority students, they seem to me in retrospect to have suddenly become self-conscious about making the claims just for black students. Or at the time it was very fashionable to be caught up in Third World ideology, so either there was some element of self-consciousness or there was an embrace of Third World ideology, but suddenly we were asked to admit blacks, Chicanos, Puerto Ricans, Third World, so-called people of color.

We then set about to deliberate. Dean Pollak appointed committees of various sorts. I can't remember the details of which committees proposed what, but it seemed to me for a while we were in perpetual meetings on these issues.

BC: These committees, one might have to do with admissions, another might have to do with curriculum?

AG: Well, no. No, admissions turned out to be one of the hottest issues. Curriculum had always been pretty bouncy here and I was chairing this long range educational planning committee and we had curriculum committees and we were offering new courses all the time in urban studies and all manner of things were going on. As I say, we were reconsidering the role of clinical programs. Public interest law began to be featured.

BC: The environment?

AG: That took a while to come along. That came much later. The environmental movement in the U.S. emerged out of some of our students who were in the Law School at that time, but they simply took their concerns with them out into the world and formed the Natural Resources Defense Council and the Environmental Defense Fund, but they did them as interested alumni. We didn't have all that much going on here that channeled them in that direction. They went first and created a field and then brought it back later.

The hot issue of the time was minority admissions, it wasn't black faculty at the time. Now, remember this is the first wave. Minority admissions became a matter of great controversy, and we ended up having a minority admissions policy that was adopted in 1969 probably. I think there was a lot of negotiation, and John Simon and I remember clearly being the key negotiators at the summit. I mean there were a lot of different factions, and we worked out a formula and a draft that was endorsed by the faculty that was an explicit pre-Bakke differential standard policy, but with controls in predicted averages. We still had a grading system. It was possible to have predicted averages, and our policy talked in terms of LSAT and grade point average differentials below which we would not

permit the differential policy to fall. So we recognized differentials and what we succeeded in doing, and it was in place by the time I became dean in 1970, was we had an admissions policy which plainly and unmistakably had different criteria for black students than for white students, but not so different that it could be said even for a moment that the black students couldn't do the work. It was, in effect, as if the low for the black students was a predicted average of C+ by the old standards and for the white students was a B or B+ by the old standards.

BC: Did you ever feel during that time in the late 1960s that you were able to please the black students?

AG: That's a very hard thing to assess. My sense was that they felt successful in having persuaded us to adopt a policy that assured that there would be a goodly number of black students. No sooner did we adopt it than they said there ought to be more. When other groups wanted a piece of the action in accordance with their own initial demands, Puerto Ricans and Chicanos, they felt that we were cutting their numbers. So, you know, there was bickering of a sort, but overall I think the fact that we had now goodly numbers, 10 percent approximately, of black students and they were pretty good students. They were not presenting academic problems.

See, we had had some serious academic problems with that first group of two who came in by the grossly differential criteria, but once we created the new policy, the students were fine. Beginning with my first class as dean, I can't remember academic problems in black students because by every objective index there was no reason in the world for them not to do good work. There might have been reason based on predicted averages for them not to lead the class, be at the top of the predicted scale, but no reason for them not to do entirely satisfactory work, and some very good students then emerged and seemed to work well in the school. Mel Watt was a Congressman that emerged in that period. Eric Clay, who is about to be a federal judge.

BC: That is the Bill Clinton era.

AG: Well, Bill Clinton and Hillary were in that period. I think Hillary entered in 1969 and Bill in 1970. Bill Clinton was certainly not an important player in the Law School. He was relatively unknown here. Hillary was visible and a participant. I knew her.

BC: Well, let's talk about women. How did they fit into the development of minority students here?

AG: Well, we never thought of women as minorities, and during the period when this issue was surfacing, the black students never made any claims for women or on behalf of women. During that same period the Yale Law Women's Association emerged and there was an increasingly militant women's presence, but it was a radical women's presence that identified with some of the strikers of the period. There were some women, Ann Freedman, who was one of the first — she and Barbara Babcock who is now a professor at Stanford — prepared one of the first case books on sex discrimination. Ann Freedman was in the school at the time.

When I became dean, I was waited on by a group of women who described themselves as the then existing Yale Law Women's Association. I met with them and they introduced themselves — one was in charge of student recruitment, another was in charge of faculty recruitment, another was in charge of curriculum. They were very well organized and they had an agenda, which they were pressing on me from the word go. I knew many of them from classes. I'd had them in criminal procedure, and criminal law, and they were articulate, but they weren't making any claim for a disparate standard. I never heard that.

There was concern about whether we were recruiting, on the admissions front — whether we were recruiting adequately on the campuses around the country where there were women's colleges, as well as men's colleges. When we went to Brown, did we also take note of Pembroke or did we assume that Pembroke was part of Brown and would respond to the Brown recruitment. Similarly with Radcliffe and Barnard. So there were issues which I felt, once they were put to me, seemed obvious that we had to respond and we did immediately, in order to broaden the base of appeal to potential women law students.

The numbers [of women] in the Law School had increased very slowly for a while. I didn't have a clear sense of numbers, just when I was a student there were hardly any. I know that going into the early 1960s there were surprisingly few, but then coming into the period shortly before I became dean, in the late 1960s, my sense is that suddenly the numbers exploded. That being the case, it seemed to most of us, if we thought about it all, that this was a problem that was going to cure itself. That as women decided to go to law school, they would apply. It seemed plain to us that the women we were having contact with had always been as smart as men and when they came in greater numbers would be admitted and would do well. We might run into problems of discrimination in employment of the sort that I mentioned in my first tape of Mary Jones in my class.

We were nowhere near the problem of considering women faculty. There were hardly any women lawyers around. Harvard hadn't admitted women until — I don't know when they began, but very late in the game.

BC: I take it that that was not an issue, that the women understood.

AG: No, women had been admitted here since the early 1900s, to my knowledge, perhaps earlier. So that was not an issue, nor were their numbers. We never set a ceiling. We never set a minimum. We didn't do anything of that sort. We let them come. I responded, as I've indicated, to the information about our processes of recruitment by authorizing Jim Thomas, who was our dean of admissions, and others as well — I hired an assistant to the dean, Carol Weisbrod who now is a professor at Connecticut. She was my assistant and I later on made her an assistant dean. They all turned their minds to what we were supposed to do to facilitate recruitment of women, as well as men. The theory was we wanted the best possible pool of applicants from wherever they came, of all sexes, colors, whatever.

We did the same thing in trying to broaden the bases of recruitment for black students and Puerto Ricans and Chicanos. I, out of my City

College background, always brought with me the concern that we might be not spending enough time at the great state university campuses, great urban campuses, that we were too exclusively oriented towards big Ivy and little Ivy, and so I put my weight on the scales to broaden those processes of recruitment. I think over time it became quite clear that we were getting more and more of the best students from broader and broader constituencies, from colleges that we'd never heard of before and with astronomical numbers coming from everywhere.

So as far as women were concerned, what seemed to happen was suddenly it was 20 percent and then it was 25 percent and then it became a third and for a while it seemed to stick. During the time that I paid attention to those numbers, it stuck at about a third, maybe 40 percent. It would inch up and then it would go down again. Some schools seemed to do a little better. My impression was that urban campuses like Columbia and NYU seemed to do better, and I always assumed that it had to do with the ease of family and spouses and people being able to handle dual careers and that we had a problem of that sort. But it's been a long time since I've been closely involved with any of that.

BC: Was there a push for courses about women, women in law?

AG: Oh, yes. That was interesting. Yes, there was a request that we do a course on women in the law and we, as a matter of fact, had one. It came out of my educational planning committee. It was taught the first time, I believe, by Toni Shays, Antonia Shays, who was the wife of Abe Shays of the Harvard Law faculty. Toni had been an assistant secretary of something in one of the federal administrations. I forget what administration. She was a lawyer. She'd gone here for a year or so and then got her degree maybe from GW. Lou Pollak invited Toni to come. She gave such a course and then when the newly militant women, this group that I described, came along they seemed to want somebody more "with it." Not that Toni wasn't "with it," but she was about my age and by definition, I was over forty-five — people of my generation were over the hill, I guess they wanted somebody in their thirties.

They came up with all sorts of suggestions, again in that mood of participation. They wanted to tell us who we should hire and the names they came up with, many of them were recognizable. They were our own graduates. Many of them weren't even minimally qualified, but they seemed like fine folks. I then suggested somebody that we in my committee at the time thought could do a bang up job who was one of our own alumni, whose name was Barbara Babcock. They didn't know Barbara Babcock and I said, "Well, she's terribly well qualified. She was an officer of the Journal here." I think at the time she was the federal public defender for the District of Columbia. I don't know whether she had already been an assistant attorney general or was going to be an assistant attorney general, but she was one of the best students that I'd had over the years. She clearly had academic credentials, world credentials, and was a very poised, assured and effective person. Well, they were very skeptical because it came from me, it had to be somebody who wouldn't quite fill the bill. I then said, "Well, we're going to propose her." They asked whether we would send a delegation of them to interview her. I said, "Certainly not, but if any of you want to go and talk to her, you are welcome to do it." "Will the Law School provide money for that?" "No, the school will not provide money for it, but if you would like to do it and want to take some financial aid, I think maybe the financial aid officer will give you a loan if you can't afford to go on your own." Well, in the end a couple of women did go. I mean there was this feeling that was emerging, you see, of wanting to participate in running the place, and it was very awkward during that period to keep the boundaries fixed. I found myself sometimes in some awkward conversations.

Barbara called me after two women from this group had been down there to talk to her. By the way, they returned and said, "She is terrific. She is wonderful. Oh, how right you were," and so on. It was all predictable because she was one of the best we had and the sort that we hoped they would shortly become, if they would just let themselves relax a little bit. She called me and said, "Abe, what's going on at Yale Law School?"

I said, “Well, Barbara, I don’t know. What happened?” She said, “I met with some women from Yale Law School and they talked about some of the people I remember about as fondly as I remember anyone, as if you all were Philistines, and that there was nothing you wanted to do but crush them under heel.” [laughs] I said, “Well, Barbara, that’s the nature of the world we now live in.”

She came. She taught. She was wonderful. She ended up collaborating with Ann Freedman on a case book, which was the first sex discrimination case book published. She subsequently went into teaching full time at Stanford Law School, has been a distinguished member of that faculty for a long time. She married Tom Gray, one of our graduates who is also a distinguished member of that faculty and they lived happily ever after.

BC: Oh, well, that’s a good story. Let’s back up just a bit and talk about Bobby Seale and the trial. You were not yet dean. I guess that was the year before you became dean.

AG: Yes, the trial began and was going on. I think...[end of tape]

BC: Okay, let’s pick it up with May 1970.

AG: Yes, May 1970 was when I was designated dean. I took office formally on July 1, but as a practical matter, events being what they were, there was shared authority between Lou Pollak and me during that period, because we needed often instant responses. Classes were no longer in session much of the time, but things were happening.

One of the first things that happened that was interesting, again as a forerunner of what was to come, we were going to have an alumni day. Our reunion time was to take place in the spring of 1970, at the same time that the Bobby Seale trial was going forward. Protest groups were forming from all over the country and congregating in New Haven. The National Guard had been called out. We were going to have an alumni day. At that time the reunion weekend was not in the fall as it now is, but in the spring and there was going to be an award, I think a presentation by Justice Harlan perhaps to Potter Stewart or from Potter Stewart to Justice Harlan. I forget what the program was to be, but the

recipient of the Citation of Merit was to be a Supreme Court justice and the presenter was to be a Supreme Court justice. At that time one of the themes of the protesters on the green was to protest the injustices that were being perpetrated on black people by the justice system.

It had become the custom in that period for events to arrange themselves — in the two years before when we had lots of protests on campus about the war and other things — for the groups to organize themselves and become increasingly militant as the academic year wore on, usually culminating in the spring with a kind of rite of spring that led to more and more aggressive demonstrations. Indeed there was eventually the Kent State and Cambodia demonstrations which involved shooting of students at Kent State.

We had an alumni weekend scheduled and we canceled it. I remember that was a decision that Lou Pollak and I made jointly because we were afraid that the groups congregating on the green from all over the country might decide to target this event that this great law school was having to honor a major figure on the Supreme Court with another figure on the Supreme Court, and in the whole publicity battle that was going on at the time, that they might decide to target us. We canceled that reunion weekend and deferred it to the fall, and that's why forever after our reunions are held in the fall.

BC: Oh, a lot of legacies.

AG: A lot of legacies. Back to Bobby Seale, he was indicted. Before the trial itself began, there was a lot of activity here during the period after he was indicted. I remember Clyde Summers on our faculty helped organize groups of students and faculty who were interested in exploring some of the issues involved in the trial and in the Black Panther complaints about justice. There were some people who wanted to assist in the defense. Some people simply wanted to know more about what was going on. Clyde Summers played a major role in organizing some of those students.

I was involved. Then I was not dean, but I was a teacher of criminal law and criminal procedure. I remember being in a group that was con-

sulted by Kingman Brewster before he made what some think his most infamous and others think his most famous statement – he didn't think a black man could get a fair trial in America, as it was then constituted. I was in a group of people he consulted as to whether he should make a statement. I urged him to make a public statement on the grounds that he was a lawyer, president of a great university that was very much in the public eye, and that there was declining confidence in our processes of justice. I hoped he would make a statement that would contribute to increased confidence. Well, he took my advice that he should make a statement, but as is the way of presidents seeking advice, he made his own statement, and it was the one in which he expressed skepticism about whether a black revolutionary could get a fair trial in America.

That led to his earning a lot of disfavor with alumni. When I became dean later, one of the legacies I inherited was having to explain to alumni around the country why Kingman Brewster might have made such a statement. Though I had not encouraged him to make that statement and was not happy with it, I found myself defending it in cities across the country, at least trying to explain the atmosphere in New Haven which was very intense and very volatile, which in some measure justified Kingman coming to the conclusion that he did.

BC: If I remember correctly, it was also his handling of some of the protests that made alumni feel not too pleased with him. He took a, I would say, conciliatory approach with some of those protests. Is that something the Law School was concerned about or was supporting?

AG: Well, I don't recall Kingman ever capitulating to protests in the way that some other campuses did, in part because perhaps we never had the kinds of sit-ins that other campuses did. But there were complaints that he was too tolerant of William Sloane Coffin, who was in the view of many alumni encouraging students to resist the draft and the war and turn in draft cards. Coffin was the Yale chaplain and they thought Kingman should crack down on him.

The most noteworthy thing that Kingman did that he got a lot of credit for was when these protesters arrived at Yale for the Bobby Seale trial and

to protest the war on the New Haven green, and the National Guard had been called out. Kingman did open the campuses to the protesters. The courtyards of every college became headquarters to kids from all over the country and granola barrels were overflowing, as we discovered granola. That later led to people saying that pot parties were going on on all the campuses and Kingman shouldn't have been so welcoming, but many people feel that it was those gestures that contained the animosities that might have been directed at Yale in that period, and are an important reason why the Yale campus never had really major demonstrations.

BC: Like Columbia.

AG: Like Columbia or Berkeley. Now, there were some things that happened in the Law School during that period. There were a number of fires on the Yale campus during this period. There had been one in Art and Architecture. There had been something at the Ingalls Rink. There was also, let's see, there was a fire in the Law School Auditorium that didn't do too much damage.

BC: I think there was one in the library stacks.

AG: Yes, I'm about to come to that. There was a fire in one of the Moot Courtrooms that didn't do too much damage, and then there was a dramatic library fire. Let me say a word about that because it suddenly emerged in the Book Review section of *The New York Times* last Sunday.

That fire occurred during this period when Lou and I were sharing governance. The dean's office was like a little command post. Art Charpentier was then the librarian, and he had a cot in the dean's office. He later became my associate dean for administration. He was living certain nights in the dean's office. There was a fire during that period in the lower floors of some of the stacks, and we learned about it one morning when we arrived and saw stacks of smoldering books lying on the street, on High Street between the Law School and the Beinecke. These books had been removed by firemen, and details of students had helped get the books out of the stacks. It was not a major fire, but it was dramatic because there were these burned books, water soaked, lying on High

Street. Many of us at the time felt that that event more than anything else suddenly tamed the order of the firebrands, tamed the order of our homespun student radicals. They calmed down, because it looked like things might be getting out of hand. We don't know who caused any of these fires, who set them, but they happened.

There was a very peculiar sentence or two in Richard Epstein's review of Robert Bork's book, *Slouching Toward Gomorrah*. In the Sunday Book Review, he describes Bork as describing the collapse of whatever values should have prevailed at the Yale Law School that took place in 1968-1970. I haven't read the book, but, since Bork was here and a member of the faculty, he was presumably referring to some of these events that I was describing earlier about participation, about admissions, about grading and whatever.

Epstein confirms Bork's sense of collapse by describing his own experience as a student of Yale Law School at about that time. I did have Richie Epstein as a student, I remember him in classes. He describes the fires. "The burning of books at the Yale Law School," is the way he puts it. He makes it sound as if students were standing around tossing books into the fire. There was never any such burning of books in a subjective sense at the Yale Law School. There was a fire in the stacks that caused some damage, and that led to water soaked books being brought out by fire department personnel into the street on High Street, and that's what Richie Epstein saw. But to transform that into the collapse of all values at Yale Law School culminating in the burning of books is bizarre.

BC: Now, during this time when there was discussion in the hallways and free flowing conversation in the classrooms and the hallways, in the dining room, here and there, was it the student unrest, the Vietnam War, the Bobby Seale trial? Were these the things that were buzzing around? Was it all pervasive?

AG: Oh, yes, they were hot issues. It led to a lot of controversy between students and faculty, particular student leaders then. We introduced elected student representatives in 1969, and many of them were feeling

their oats and thinking they were entitled to have the Law School march to their tune. They had a lot of agendas. The anti-war agenda was a powerful one, and many members of the faculty shared that agenda, but didn't feel that the Law School was a legion to be enlisted in the fight. They felt individuals and groups could organize themselves, do as they wish, and we didn't put anything in their way, but they wanted to bend us to their purpose — many of them did.

There were all sorts of peculiar incidents, like demanding that we not hold examinations or grade students as having passed their courses, and we all should march on Washington together.

BC: That never happened?

AG: Well, some things happened. We refused to call off examinations. NYU and Rutgers during that very year did call off examinations.

BC: So did Columbia, because I was at Columbia.

AG: We didn't. We held the examinations. We were liberal as we often have been in letting people take them at different times, but we never let our students have the experience which some others had, which was to be denied admission to the New York Bar because they had been given passes in courses in which they were not examined. That happened at NYU and Rutgers. We spared them that travail by standing fast against their pressures.

There were individual faculty members who did join with groups of students in lobbying in Washington on war-related things. I remember Alex Bickel conspicuously was involved in that kind of activity. Others as well.

BC: Now, when you became dean and you began to talk with people around campus, did you have the sense that the Law School had a critical reputation of any sort? Did it stand separately in terms of any of these issues?

AG: The Law School had always in my memory even as a student been regarded as more liberal than the rest of Yale. The faculty was more liberal. The student body more interested in political things, and that seemed

to continue throughout the years. We were a liberal faculty. There were very few Republicans. That was one of the grievances that Bob Bork had when he came. He and Ralph Winter, Ward Bowman were I guess among the only Republicans we had. So we were on a spectrum of center to left of center, by and large.

BC: And then when you began fund-raising, you mentioned earlier, that became a theme to deal with in alumni circles?

AG: No, our alumni by and large were not so different. We did not have a conservative alumni body for the most part. It was a liberal alumni body that was generally supportive. When we got into some of these really unusual issues like tilting the admissions process in favor of minority admissions or calling into question, as Kingman did, whether justice could be served in America, I think those began to meet with alumni resistance, but on the more general political spectrum or anti-war matters, we never had much of a problem of that sort.

BC: Switching around from politics a little bit, we're in the middle now of a building renovation. During your deanship was the building an issue? Were people worried about deterioration?

AG: Well, I organized the then capital fund drive which took place in my final year, and so the drive got going and the whole structure was set up. It was chaired by Cyrus Vance and Oscar Ruebhausen. What happened in the library was a product of that capital fund drive. The library was a centerpiece in the opening of ceilings and redoing the whole main library reading room. It was one we planned to do and set up a structure to do, and all of the drawings were done while I was dean by Herb Newman, the introduction of the carrels and so on. Art Charpentier oversaw that exercise while I was dean and then Harry Wellington, when he became dean, oversaw the actual fund-raising and construction phase of that.

We had building components, some for the library. Room 127 was done, planned for in my administration and actually constructed in Harry's. A number of such things were done during that period. Yes, books for the library were always brought along.

That fund drive was twelve to fifteen million or something like that. By contemporary standards it was a relatively modest fund drive. Gene Rostow had presided over the planning for a fund drive, and then there was a little hiatus, and it came time again. Yale was going through something they called the Campaign for Yale, and the Law School decided to spin off a Sesquicentennial fund drive to celebrate our 150th year and it was very elaborate. There was a lot going on.

John Roberts, who later became dean at Wayne State and then at DePaul was here as associate dean. He was a major administrator of that capital fund drive.

Third Interview, November 1, 1996

BC: I thought we'd start out with a topic about tenure decisions during the time that you were dean. There were controversial and big decisions in that area then. Do you want to comment on that?

AG: Yes, when I became dean it followed a period in which we had done a lot of hiring of young people. Many of them were our own graduates, and they had been hired mostly during the prior administration when Lou Pollak was dean, some at the very end of the Rostow deanship. It fell to us to decide whether or not these people should be renewed, promoted or terminated. This occurred against a background where we had a very large increase in the faculty when I and my contemporaries came in the period 1955-1956. Virtually everybody who came in that group either came with tenure or as a visitor. Those coming without tenure, were promoted to tenure. There were very few controversies about tenure in my time cohorts.

On the other hand, in the years before we were all hired and before Gene Rostow became dean, there had been a great many departures of people who had been denied tenure and who had gone elsewhere, and some quite hot controversies surrounding some of those. The Vern Countryman matter was one of the best known of those. John Frank was another. When I became dean, we therefore operated against a history where there had been many denials, and a more recent history, where there had been very few. We were inclined to take the position that promotion at Yale Law School should not be treated as membership in a club. We wanted to, in a period of expansion in legal education where many more people had come into teaching, where we had interviewed an awful lot of people for these positions, be filled in non-tenure fashion. We interviewed people who had gone elsewhere, but when we interviewed them were very near possibilities for our hiring them. We operated in a world where there were many more people out there who were contemporaries of the group we had chosen, against whom we had the possibilities of

comparing them. I think we were inclined to apply more of a national standard, a standard of comparison against the world in a field than may have been the case when we were promoted to tenure. That may have been arrogance. Some suggested it was a changing standard, but it was against a background where nobody had been promised tenure. Our history had included these two major segments that I've just described.

In any event, as we went forth into these discussions, it turned out that four or five people were either not promoted and therefore would have had to leave because they'd been here the requisite number of years, or some were extended and proved unwilling to be extended and left. I think I was perceived as, and others who were heavily involved in the appointments process with me at that time (Alex Bickel, Guido, others), as being perhaps tougher than had been the case before.

I felt that it was terribly important at that time, in order for us to have a fair consideration of each of the people we were talking about, that the faculty become persuaded that a denial of tenure or a denial of promotion at Yale Law School did not mean that these individuals would be consigned to outer darkness, or to oblivion. Concurrent with what we were doing, I devoted a good deal of time and eventually with great success in facilitating the movement of people who did not succeed here to other places.

When we did not promote Robert Hudec, for example, he ended up with interviews at many, many good schools and ended up with an appointment at Minnesota. We did not promote Larry Simon, who was offered an extension in term. He ended up with an appointment at USC. When we did not promote Richard Abel, he ended up with an appointment at UCLA. When we did not promote David Trubek, he ended up with an appointment at Wisconsin. Earlier, when we did not promote John Griffith – that was before my administration – he ended up with an appointment at NYU.

By and large we were demonstrating that there was a large world out there, and we should not assume people who happened to be here

for a few years had an entitlement to remain here. There's no question but that many of the people we did not promote went onto successful careers elsewhere, but my feeling and the feeling of many on the faculty was that the people we brought in to replace them was again among the more successful hiring periods at the Yale Law School.

We found ourselves interviewing people who had been through here and who had not been made offers first time around, and had gone to Penn, to Chicago, to Michigan, to Stanford, all sorts of places. We now had an opportunity to read their work and make lateral appointments, either as visitors or straight out.

BC: Was there resistance to this sort of tightening of the standard? Is there a way to categorize the resistance if there was any?

AG: Well, as it was all happening, you know, these cases come up one at a time or no more than two in any given year, and each of the people were by and large good enough so that they had proponents, as well as opponents. That's why it proved easy, relatively easy to place them.

Yes, we had controversy here, but we voted and these people did not get the two-thirds vote, so they fell by the wayside. But the process was such that they were people who bounced back. Not without some pain and recrimination. Their proponents often said that we were raising standards, to which the response sometimes was, "We are not. We have an absolute standard." Somebody else would say, "Yes, we are raising standards." That's the kind of discussion on appointments that was bound to take place when there's controversy.

BC: Let me ask if there seemed to be a certain group or ideology behind the notion of getting or not getting tenure.

AG: Well, I think not, but I should in order to cover the issue fully, take note of the fact that it has been suggested that there were political motivations at work on some or all of these cases. They did arise as the period of ferment on campus was developing. We're talking about the early 1970s. Actually, these people were hired, many of them, during the period of beginning ferment in the mid 1960s, late 1960s. They were being appraised by people who had

come with them, through a period of great controversy and conflict that I outlined earlier.

I don't think we were acting on political grounds. I know that there were some among the younger people who were more supportive of some of the more radical positions and causes, but there were many who were not radical at all, and then there were some who fell in a kind of center position. So that if I would have been asked to break them down in some kind of systematic way as to who was inclined in which direction in relation to some of the ideologies of the time, I'd say that some were probably inclined more to the left than others, more to the left than I was, but others who I think were plain and unmistakably to the right of me and others.

As far as faculty members were concerned, I think it was not political or ideological. It was scholarship ideological. There were some people who were sort of Brahman-like in the way in which he approached and applied standards. He had very elevated requirements, both qualitatively and quantitatively and argued for a very high standard in quantity and quality.

To give you an illustration, one of the people we did not give tenure to but offered extension to, was principally supported for appointment to the faculty by Alex Bickel and by me. He was not a radical by any means. I think in ideology, he was probably more liberal than Alex and about as liberal as I was at that time, He had promised to do major writing in a particular area, and didn't deliver. We waited years for the product and it didn't come. When it came it was a slender piece at the end of something like six or seven years. We were very disappointed in that. We thought the slender piece he wrote was quite good, but it was slender. He announced that he had no intention of returning to the opus. That didn't sit well with the governing board at the time, so there was no inclination to promote him.

I don't think you can trace ideology. The decisions very often were affected by either a judgment that the product, though ample in volume,

was not particularly imaginative or resourceful or, in some instances, the people had literally panted across the finish line. They had come to the end of the period of appraisal, had not written very much, had seemed exhausted by the effort and looked as if they might not write again. We were determined not to repeat what was widely perceived as Harvard's error of promoting a lot of people because of the promise they had shown early and then finding that the promise had never been fulfilled.

BC: Also, maybe you can comment on this. These tenure denials came at a time of contraction on the part of other disciplines. The great expansion in the 1960s had produced an awful lot of academics, and it was in the 1970s that things had to be tightened up. Was there an obvious connection there?

AG: Well, there was a connection in the sense that we felt we had a lot of talent available to us, and they became the subject of these comparative assessments. When we replaced these people, in the way that I've described, we did marvelously well. We were able to hire Bob Cover and Geoff Hazard and Owen Fiss and Bruce Ackerman and others, people who were very, very good and had already proved themselves at other places. We felt that the new recruitment by way of replacement was remarkably successful.

BC: Now, to the clinical program and how it grew during the time of your deanship.

AG: The only clinical programs we had at Yale Law School when I entered as a student were student administered. There was a student Moot Court board and a student Barrister's Union board that administered mock appellate arguments and mock jury trials. In addition, there was a student Legal Aid Society with a public defender adjunct. They sought out the local legal aid attorneys and provided them with student assistance. But there was nothing that the Law School provided in the way of professional supervision of clinical activities.

There also emerged somewhere along the line something called Legislative Workshop that Professor Emerson oversaw where students

took on projects with the state legislature, and that became in its way a counterpart of the Moot Court organization. The students did it. They administered it, but it was an outside activity.

During that period when a great deal of foundation money was being funneled to legal education, one of the organizations that emerged was something called CLEPR, Council on Legal Education for Public Responsibility. It was headed by a man named William Pincus, who had been a major program officer at the Ford Foundation. His pet hobby was to introduce some kind of supervised clinical education in the law schools. He began to offer grants to law schools for demonstration projects, and we early prepared applications to CLEPR, as it was known.

BC: And when was that?

AG: I would say late 1960s. During that period I was chairman of the long range educational planning committee. I mentioned that early, when Pollak was dean. I had been chairman of that committee under Rostow as well. One of the projects we undertook was to prepare a submission to CLEPR. The person on our committee who oversaw that submission was Ralph Winter, now judge of the Second Circuit. Ralph and I spent a good deal of time working up the proposal with CLEPR and we got some money to place an attorney in the Law School who was paid full time by the Law School for the development of a clinical program supervised by a faculty member.

Ralph and I, under Lou Pollak's deanship, then hired for the Law School and he was approved as a regular appointment, Daniel Freed. We got the money. Freed was the person hired to design the program. He did design it, and it took the form which is now much multiplied and varied, but the form essentially of placing law students at the Federal Prison at Danbury, placing them at the mental hospital facility in Middletown, placing some in the juvenile system. The idea was that the students would both handle cases for clients and also engage other levels of administration, besides just handling clients. The idea was that the institutions involved would come to be studied, as well as the handling of individual cases.

Freed designed the program. When we needed somebody to help supervise the students, we hired Denny Curtis. Curtis was the director of the program for a goodly period and then we hired Steve Wizner to assist Denny Curtis. The two of them were the supervising attorneys.

There was a good deal of controversy about the form their appointments should take because the law school world was riven at the time with questions about whether you could make appointments of people for clinical positions, which were now becoming popular, without their having to meet all the conventional criteria for tenure. We adopted quite an original model, which was to analogize our supervising attorneys to administrative personnel, rather than to faculty personnel. The analogy was that they could be like deans or other administrative personnel in the university, because it was not expected that they would do scholarship. They would be workers running departments, in effect, for the Law School and needful of a kind of supervision and professional accountability that we did not expect of faculty.

BC: Without tenure?

AG: Without tenure. The idea was that they would have term appointments. To the extent that they were invited into the teaching program, it would be a separate track. They would be appointed lecturers or adjunct professors or whatever, but the main job of supervising attorney was comparable to running an office somewhere. That, as you can imagine, excited some controversy. We felt our appeal would be strong enough to get very good people.

It worked very well here. It enabled us to avoid the searing controversies that characterized a lot of places where so-called clinical professors were submitting for tenure articles of the sort that nobody would ever class as tenure worthy, and institution after institution was compromising its tenure standards, while claiming they weren't.

There came a point later in Harry Wellington's administration when I chaired another committee that came up with what has been called clinical tenure. It's not clinical tenure, but we reviewed the program, and we now

have appointments after a certain period of time comparable to tenure consideration. People come up for appointments indefinite in nature, subject to termination on two years' notice. That was deliberately meant to give them a kind of security of employment comparable to something beyond the probationary period of an ordinary administrator.

BC: So it was for security reasons, not for academic freedom reasons.

AG: Security reasons.

BC: Or because you couldn't attract people into the program.

AG: No, we decided to offer those kinds of appointments to people who had been here like Wizner and Curtis, and then as the program expanded, we have come to do that after six years, or something like that, to others as well.

BC: And it's grown. The clinic has grown.

AG: The clinic has grown strikingly. It started with Freed and one. Then it was Freed and two. Then, while I was still dean, we adopted a policy of having two clinic fellows who were to come for a year and leave, bringing their learning and experience to other places. That rapidly in the Wellington administration got converted to two additional positions. So then there were four, and now I think there are untold numbers of others, plus a miscellany of tutors and others.

BC: The clinic is a very active dynamic place.

AG: It's a very successful program, and it raises very serious questions as to whether it may have gotten too large. That was taken up a couple of years ago by the Schuck committee. Guido appointed a committee headed by Peter Schuck. I was on that committee and it met nearly forever to review everything, and reported to the faculty and pronounced the program satisfactory, but again not without controversy. There have been controversies all along about whether we should have more or less.

BC: Speaking of growth in general terms, growth is something that has happened to the administration in general. More deans, more library, and more placement people, more everybody. Could you just review the issues surrounding that?

AG: Well, we begin in a gentle time with a one-horse shay until we come to the automobile. Gene Rostow, when he arrived, found an awful lot of administrative activities packed into the registrar's office. He began a process of hiring various assistant deans for alumni relations and for fund raising and so on. As time went on, there seemed to be more and more, in part because there were more and more needs for them. I've lost count. I think I had perhaps four people in addition to myself, three or four. I think there are now eight who carry the title of dean. That expanded rather steadily, not so much under Wellington, but under Guido. I think the expansion continues.

It's not only there. We have a lot more managerial personnel below the deans. I originally had an assistant dean who oversaw the *Law Report* and also wrote half-time for the *Law Report*, and now I think there's somebody who does the *Law Report* with somebody to help them, and on top of that there are two or three people who work on grants. So it's become a much more elaborate operation. Placement is more elaborate. The quality of the personnel we have running a lot of these offices is much better, I think.

I'm not talking about the deans now. I don't know how good they are at doing their jobs, but Jean Webb in admissions, the way in which financial aid is administered, Jean Doherty running the business office. I think that level of personnel is more skilled.

BC: How about the library?

AG: I never learned as much about the library as I might have, in part because Arthur Charpentier, who was the librarian, was my associate dean for administration. I felt when I became dean that administration had become something of a shambles because of the pressures and various ferments of that 1969-1970 period. I needed desperately to have somebody with some experience in administration reorganize the enterprise for me and Arthur Charpentier was the only full time administrator we had. Art agreed to do that. He reorganized financial aid and the business office and admissions, all of these along side of being librarian. I'm told later

that he may have neglected his duties as librarian by virtue of that, but we were so busy playing catch up for about two years that I never turned my attention much to the library. So I can't say anything knowledgeable about it.

BC: Thank you so much for your time.

[End of interview]

