A CONVERSATION WITH

Harry H. Wellington
Harry Wellington
1926–2011
You are invited to eavesdrop on conversations with former deans and faculty of the Yale Law School as they recall the people, ideas, and events that helped shape this institution during their tenure. These conversations were held under the auspices of the Lillian Goldman Law Library as part of its oral history project.

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

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

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

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

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

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

Our goal with the oral history project is to assist future researchers with gaining a better understanding of Yale Law School’s past by offering them direct access to the words of its deans and faculty — the policy makers and participants. Perhaps some future written history will draw on these conversations as a source for gaining a clearer understanding of Yale Law School’s past.
HARRY HILLEL WELLINGTON (1926–2011) served as the twelfth dean of Yale Law School, from 1975 to 1985. He was a graduate of the University of Pennsylvania and received an LL.B. from Harvard Law School in 1952. He clerked for Court of Appeals Judge Calvert Magruder and for U.S. Supreme Court Associate Justice Felix Frankfurter. Wellington joined the Yale Law School faculty in 1956 and was named the Edward J. Phelps Professor of Law in 1967. He became Sterling Professor in 1983. From 1992 to 2000, he was dean of the New York Law School.

Among Wellington’s publications are The Least Dangerous Branch: The Supreme Court at the Bar of Politics with Alexander Bickel (1986); Interpreting the Constitution: The Supreme Court and the Process of Adjudication (1990); and numerous articles.
**Harry Wellington**

*First interview, March 6, 2000*

**BONNIE COLLIER:** This is Bonnie Collier and I’m talking with Dean Harry Wellington on March 6, 2000, in New York, and we’ve agreed that we’ll start with a short biographical sketch.

**HARRY WELLINGTON:** Okay. I was born in New Haven in August 1926 and I grew up there and fled, vowing never to return. I went to the University of Pennsylvania to college. I was waiting to be drafted. I had asthma and I was about to be called up, and then they decided not to call me up and so forth. So I decided I ought to do something and I went out to California. I did some graduate work in economics and bummed around Los Angeles for a couple of years. And then I went to Harvard Law School. When I graduated from Harvard I was a law clerk to a judge, the Chief Judge of the Court of Appeals for the First Circuit, Calvert Magruder.

**BC:** Oh yes.

**HW:** Calvert Magruder. He was a very, very good judge, really highly respected. It was a nice time. In those days it was a slow, sort of sleepy court. There wasn’t a great deal of work to be done. (Laughter) And he was an interesting schmoozer. Anyway, I had a lot of fun. I had just gotten married to Sheila Wellington and we were living in Cambridge. She had graduated from Wellesley when I graduated from Harvard. And it was a very, very pleasant year. I then was a law clerk to Felix Frankfurter. No, I then taught for a year at Stanford. And then I was a law clerk to Felix Frankfurter, and then I went to Yale in 1956, in that vast migration. I don’t know how much biography you want in this, whether this is about me or about Yale. I, you know, we can talk about the Frankfurter year.

**BC:** Yes, let’s do that. Let’s start with that.

**HW:** You want to talk about the Frankfurter year?

**BC:** Yes, tell me about him.
**HW:** He was a wonderful, wonderful person to work for. He really treated his law clerks like the children he didn’t have. They were all male. I don’t know that he ever— I’m sure he never had a female clerk.

**BC:** Was that a reflection of the times or that was him?

**HW:** That was the times. I don’t know when the first woman law clerk was appointed.

**BC:** I don’t know either. That’s interesting.

**HR:** I just don’t know. But there, of course, were—while he was still in the court—there were woman graduates of Harvard. Although he did have a Yale Law School graduate who, uh…

**BC:** When you were there?

**HW:** No, there was one other clerk when I was there and that’s Andy Kaufman, who teaches law at Harvard now. But there were no women law clerks at all when I was there. I just don’t know when the, uh, when the first woman clerk…

**BC:** Um.

**HW:** Women began to graduate from Harvard in the fifties, I don’t know, 1954 maybe, 1955–56. I’m just not sure.

**BC:** In the fifties, I know. I understand that someone at the Yale Law School sent a telegram to the dean at Harvard saying, “Well fifty years late but it’s okay, you still did it.”

**HW:** (Laughter) Well, it was, in token amounts, I guess. Although that was also the case at Yale.

**BC:** I’ve been interviewing some of those women, by the way.

**HW:** Have you?

**BC:** From the twenties, the late twenties and thirties, law school graduates. And they are an interesting bunch of people.

**HW:** I’ll bet they are. Anyway, so Frankfurter was very warm and involved and I should say the clerks had, uh, I think we worked hard but we had a very good time. I’ll tell you one story that may sum up in some way the kind of relationship that he had with, at least with me, and as far as I know with most of his clerks. There was a case that, I guess, he was
assigned to write the majority opinion in, and it was clear what the court was going to do and what he was going to write was something that violated all of his views, and jurisprudence, and rightness, and when a case should be decided and so forth. I was working on the case, and I wrote him a memo, as I recalled about this. And we spent the better part of the day talking about it. And the conversation got very heated and he said, “Okay I’ve heard you. I don’t agree with you and that’s it. I don’t want to talk about it anymore.” One of the things that his law clerks did was drive him each day. We alternated and drove him from his house in Georgetown.

BC: Oh really?

HW: To the court and back. So we each had one day. You know, we picked him up in the morning and brought him to work and then drove him back.

BC: How long was the drive? How much opportunity for conversation?

HW: Oh it was—there was plenty of opportunity for conversation. I don’t know how long, it depended a lot on the traffic and when he wanted to leave and, you know, all of that. But it was probably a half an hour drive each way, would be my guess.

BC: But good dialogue on the way?

HW: Oh yes, sure. We always talked about something or other, whether it was the political scene, or law, or history, or whatever was going on in his head at the time. Anyway, he said he didn’t want to hear it, and then he didn’t want to hear any more about it. He had made up his mind and that was that. I was driving him back that day and he walked into my office ready to go, and I got ready and I raised it again. And he slammed his hand on me. He said, “I don’t want to talk about it. We’re done with it. We’re finished.” And I couldn’t stop. So we got in the car, and I was driving him, and we were sort of quiet, and I raised it again in the car. So he ordered me to pull over and he got out of the car.

BC: Oh no!
HW: Yes. Slammed the door. Got out of the car. So I drove around the block to look for him, and I guess he had gotten a taxi or something. It was dark. I couldn’t find him.

BC: Oh no! (Laughter)

HW: I didn’t know where he was. So I went back to where we were living in Capitol Hill and my wife was working at legislative service, at the Library of Congress.

BC: Yes.

HW: I don’t know whether she was back yet or not, I don’t think so. But anyway, whenever she arrived or if I got there before she did or she was there. I said I was out of a job and, you know, I’d look around and see what I could do in Washington again and get a job. I was sure I would be fired. (Laughter) The next morning when I walked in, he was already there. The other clerk had picked him up. He walked in and he threw down on the table a draft of something that he had written.

BC: That night.

HW: That night. And he said, “I hope you’re satisfied.” And he had, he had…

BC: He had taken your position.

HW: Yes, he had changed his story.

BC: Oh gosh. (Laughter)

HW: And it was clearly right. And I don’t know what was going on with him.

BC: Was he emotional? I mean, did he come to big decisions after emotional outbursts and argumentative speeches?

HW: Well, he frequently argued with us, with his law clerks. We had a lot of argument.

BC: But out of those arguments came—was it sort of thinking aloud or…

HW: Well he had, on many issues he had positions, many of which were wrong, and many were right. There was always a lot of discussion on cases and how to approach issues and so forth. And he was constantly talking with his clerks—two clerks.

BC: What was the pace of work? Was it frantic?
HW: No, it wasn’t frantic.
BC: Relaxed, lots of time to sit and chat things over?
HW: Well, I mean there was a lot of work. I guess we worked, I don’t know, ten hours a day, something like that, and frequently weekends. But it wasn’t—the pace wasn’t in any way overwhelming, or at least I didn’t think it was at that time. I wouldn’t want to work ten hours a day, six days a week, seven days a week now. But it wasn’t bad and we had a lovely time that year.
BC: At that point in your career, what were your expectations? Where did you think you were headed? Was academics always in your mind?
HW: Yes, I was pretty sure that I wanted to teach. I, (Laughter) that evening I thought I would probably get a job practicing law in Washington for the remainder of the year.
BC: Yes, but you had…
HW: But I don’t remember what time of the year it was, except that it was dark when I left him off, so (Laughter).
BC: Yes (Laughter).
HW: So it was probably, it was probably in the winter, would be my guess.
BC: But you had thought you would teach, even in law school or...
HW: I wasn’t sure at all in law school.
BC: Yes, and if we could back up just a little. Why law school? Why not a Ph.D. in economics or something else? What was it?
HW: I don’t know. I wasn’t entirely sure what I wanted to do. It was partly that. It seemed to me that law was very central. I mean I knew enough to know about the centrality of law in American culture. So it seemed to me that this might be a good thing to do. I wasn’t sure when I went to law school what I wanted to do.
BC: People say, when I ask them that question, that straight academics is fine and interesting, but you can’t do anything. It’s not active enough. Law gives you opportunities that straight academics don’t give you. Was that your thinking?
HW: I don’t think that that’s what moved me. I had actually thought about economics. I had done some, when I was in California, in Los Angeles.
I took some courses in economics at UCLA. And I guess what discouraged me there was the fact that it was perfectly apparent to me that if I wanted to continue the study, or to study economics in any serious way, I would have to spend a considerable amount of time learning mathematics. I might have thought that that was the thing to do if I thought that I would be sufficiently interested in it. I thought about going to graduate school in history, but it just seemed to me that this was, you know, it’s sort of keeping one’s options open. It’s hard to put one’s self back that long ago.

**BC**: Now Stanford was before clerking?

**HW**: Well, after I clerked for Magruder and before I clerked for Frankfurter. But I knew that I was going to clerk for Frankfurter. He had two clerks that year. I don’t know exactly why it was that it was put off for a year, so I went to Stanford.

**BC**: For a year to teach.

**HW**: For a year to teach. They understood and they gave me a leave, so I could come back if I wanted it.

**BC**: And how was that year?

**HW**: That was not really great. I really didn’t much like Palo Alto.

**BC**: Yes.

**HW**: And Sheila hated it. We were so much the youngest people on the faculty and everything was too clean, and the sidewalks rolled up. (Laughter)

**BC**: Yes, the weather was too good.

**HW**: Yes it was. I actually liked the weather a lot.

**BC**: Well I think of you as a New Yorker, and I didn’t know that you were from New Haven.

**HW**: No, no I’m not. No, I’m not a New Yorker at all. Sheila was born in Brooklyn and grew up in New York, in Manhattan, and went to Wellesley. And I met her when she went to Wellesley. And we’ve been married for, uh, forty-eight years, I guess.

**BC**: Wow!
HW: I think it’s going to be forty-eight years.
BC: That’s a long time.
HW: And she’s only fifty, so …
BC: (Laughter) I realize we’re going backwards but we’ll jump forward in a minute. You grew up in New Haven. Did you go to private school there?
HW: No, I went to Dwight School in grammar school and to Troop Junior High School and to Hillhouse, which, at the time I went to school, was where Stiles and Morse Colleges are.
BC: Yes, and there was another school there, as I recall.
HW: There was a commercial high school called Commercial.
BC: Commercial High School, yes.
HW: I think, where the power station is now, was Boardmen’s Trade School. Or maybe Commercial was there.
BC: So the gym was on the other side of the high schools. Were your parents connected to Yale?
HW: No. My father worked for the city as an engineer. He went to Yale. He went to Sheffield at a time when Jews, very few Jews went to Yale. And my mother went to Hillhouse High School. She grew up in New Haven. He grew up in Waterbury.
BC: Well, let’s get back to Frankfurter.
HW: One of the loveliest parts of the job that went on for, oh I don’t know, a couple of months, was this. I think that Frankfurter’s closest friend was Dean Acheson. In fine weather he and Acheson would walk. They lived near each other in Georgetown. They would walk to Covington and Burling. This was after Acheson had been Secretary of State. And earlier I or my co-clerk would pick up Frankfurter in front of Covington and Burling.
BC: Yes.
HW: Acheson had some sort of heart condition. He had some arrhythmia or something. He was advised not to walk. So Frankfurter said, ‘Well I’ll
have one of my clerks pick you up every morning and take you.” I mean he certainly was in a position to have a driver and a car.

BC: Yes.

HW: But anyway, I got assigned to Acheson. And he, of course, went in to breakfast, and I had breakfast there.

BC: Is that right?

HW: Many, many mornings, and then drove him to work. And the house, of course, was always crowded with people from all over the world.

BC: Now what was he like? Tell me about him.

HW: Well, he was wonderful, you know. I mean he was extremely gracious and full of stories about Truman and others.

BC: Where does the Frankfurter friendship date from?

HW: From the New Deal. Acheson went to Harvard, Yale College, of course, but to Harvard Law School. But I don’t think that he was one of Frankfurter’s students at Harvard. But Acheson was in the New Deal. I don’t actually remember, though I recently read the Chase biography of Acheson, which is a nice little book. I mean there are a lot of biographies of Acheson but this was one that came out, I guess, last year. There was something about their friendship and how it developed. They were very, very close, very close.

BC: Did Frankfurter have a friend on the court? Was there someone on the court who was close to him?

HW: Well, when I was there it was Harlan. I was there after Brown and Warren was the Chief Justice. It was a period when Warren and Frankfurter were not getting along. And Frankfurter and Black didn’t get along. And Douglas got along with no one.

BC: (Laughter) Yes.

HW: But, indeed, my law school roommate was clerking for Warren and Jerry Cohn was the Harvard person.

BC: He was clerking for Warren?

HW: He was clerking, those two were clerking for Warren, and there was someone else who was clerking for Warren. He had three clerks in
those days. And I don’t remember who the other person was. I just can’t think of his name. But Jerry and Sam Stern; Sam and I had gone to law school together and we were very good friends, and still are. Jerry and Sam were forbidden to talk by Warren, to talk to Frankfurter’s clerks about law business because the thought was that there was some kind of conspiracy going on, and Frankfurter was trying to influence through his clerks. Jerry then stayed on and spent the next year with Frankfurter, as his law partner.

**BC**: Oh! Was that usual?

**HW**: No, it was quite unusual.

**BC**: Yes.

**HW**: Quite unusual. Although a number of justices kept a clerk for two years.

**BC**: Uh-huh.

**HW**: But it’s—I don’t know of any other case where one went from one judge to another, except where there was a retirement, or a death, or something of that sort.

**BC**: Now Douglas’ clerks…

**HW**: He had one clerk in those days. His name was Bill Norris.

**BC**: Was he isolated?

**HW**: No he wasn’t isolated, a lovely fellow. And he just retired as a judge of the Ninth Circuit.

**BC**: But there was some isolation of Douglas?

**HW**: Douglas just didn’t have anything to do with anybody.

**BC**: Anybody. Yes.

**HW**: As far as I know.

**BC**: How did Yale happen in your life?

**HW**: How did Yale happen? Gene Rostow was looking to hire people.

**BC**: Yes.

**HW**: Partly because there had been a lot of people who had left Yale, either because they weren’t promoted, or because they didn’t get tenure, or
because they were unhappy with what was going on at Yale, or—Bittker is a much better source for all of that than I am.

**BC:** Well, the faculty had shrunk.

**HW:** The faculty had shrunk. When Gene became dean Whit Griswold was president and he was very close to Gene. And I think Gene struck a very good deal in terms of expansion and, you know, he persuaded him that if Yale was to recapture its position in legal education and expand it, that he had to be allowed to do a lot of hiring.

**BC:** Yes.

**HW:** And so, he had people all over the place, you know, his former students and then Yarmolinsky, I think, was his principal recruiter in the Washington area. He just died recently.

**BC:** Oh, really?

**HW:** Yes. I knew Adam. I don’t know how I knew him. Anyway, he got Yale interested in me. Sheila really didn’t want to go. I hate to put it on her. Ah, you know, this is the story, it’s always the spouse who doesn’t want to stay somewhere. (Laughter) I didn’t much like Stanford, as I said, but I also didn’t like New Haven, not Yale, but New Haven.

**BC:** So you were not eager to come home to New Haven.

**HW:** Right. I wasn’t and Sheila wasn’t all that interested. My parents were still there. On the other hand, she really didn’t want to go back to Stanford. So Gene called me and asked me if I would come up for an interview. So I did. And the only person I knew on the faculty there was Boris, because he had been visiting in Stanford the summer before.

**BC:** Yes.

**HW:** And I don’t remember what the interviewing was in those days, but I don’t think I had to present a paper. You know now it’s much more elaborate. I did go around and talk to people, I guess, and then there was a lunch in Mory’s. I got into an argument with McDougal over something. I have no idea what. We carried on the argument as we went back, and I apparently did continue to have this trait of insisting in those days (Laughter) that I was right, whether I was or not. And I
remember that I was right in the Frankfurter episode, but I really am not sure that I was right in this one. But anyway I was very, extremely insistent, and the argument went on and we went back to his office. I was insufficiently deferential to his very substantial force at Yale. So, I figured that that would come to nothing, and I actually thought that it was just as well because I wasn’t really sure that I wanted to go there. And maybe we would do, maybe I would do something else and I’d look around somewhere. And there was Harvard where I was pretty sure that I could get a job, but not immediately.

**BC:** Was Frankfurter advising you?

**HW:** Uh, no. In fact I don’t recall that he did.

**BC:** Would he if he had? Would he have advised you to go to Harvard?

**HW:** I certainly would have gone to Harvard. Harvard was in a different position. They weren’t hiring anybody then. They didn’t hire at the time. Frankfurter was involved in the heavy effort to get Alex Bickel appointed to Harvard. I don’t remember exactly what Alex was doing at that time. He came to Yale at the same time, in 1956.

**BC:** Yes, right. He was in one of the big hiring groups.

**HW:** At the same time I did.

**BC:** Yes.

**HW:** This was the, I don’t know, the winter or spring of 1956 and we all arrived or almost all of us arrived in this whole gang of people.

**BC:** Right.

**HW:** A real crowd arrived in the fall.

**BC:** Let me ask you a question about that.

**HW:** Anyway McDougal, as it turned out, so the story is, was one of my strongest advocates. And there was a problem because there was the Harvardization of Yale.

**BC:** That’s what I was going to ask you about.

**HW:** And, you know Alex had been hired, and to take two Frankfurter law clerks! And, you know, “this is Harvard, and we’re going to corrupt the institution,” and all of that.
**BC**: So you did hear that. That is my question.

**HW**: Oh yes. This is what I had heard. Is it true? I don’t know. But I’m quite sure that this was, and Rodell was, undoubtedly, the major spokesperson of this.

**BC**: But I think Emerson too was part of it, no?

**HW**: I don’t, he may well have been. He may well have been.

**BC**: And, perhaps McDougal, in a sort of legal, philosophical way.

**HW**: But I’m told, I was told that McDougal was a powerful ally. I wouldn’t have had the offer, in all probability, if I didn’t have an advocate who was, at least to some extent, involved in this Harvard/Yale nonsense.

**BC**: I wonder, did Harvard have the Yale thing? I mean Yale had the Harvard thing.

**HW**: Did they have it? I don’t know. I mean, I really don’t know. Certainly it’s all vanished.

**BC**: Yes. So the people who came in 1956 were you and Bickel and Lipson. Is that right?

**HW**: Yes.

**BC**: From Harvard with Harvard genealogies? And who else came with you that year.

**HW**: Uh, who else? Frank Coker, who died young …

**BC**: There may only have been four then that year?

**HW**: Well, Charles Black came with tenure from Columbia. Clyde Summers came as a visitor from I don’t know where he had been teaching then, and stayed. Pollak had come the year before, as had Quintin Johnstone and then Joe Bishop arrived. I guess that was, maybe, a couple of years later.

**BC**: Tell me your impressions.

**HW**: Of?

**BC**: Of Yale when you came.

**HW**: Oh, Ellen Peters also came in.

**BC**: Oh, yes.
**HW**: My impression of Yale when I came, well, I loved it. I had first of all come at a time when there were a lot of new people coming. They inevitably constitute a support team.

**BC**: Yes.

**HW**: And we sort of felt that we had power. Ward Bowman came that year. He was older but, uh, I guess Ellen Peters and I were the youngest people in the group. And Abe Goldstein, did we mention him?

**BC**: No, we didn’t.

**HW**: He also came that year. And Joe Goldstein. So there were a lot of people. There were a lot of people. And it was, it was wonderful and the students were marvelous. It’s really one of the great things about Yale. I know the library, it was a terrific place. I mean I liked Yale a lot. Fortunately, and it was really from a personal point of view, I mean it was fine with my parents. I ran into a lot of people I had known when I was growing up in New Haven. So we knew a lot of people in the city. I got to know a lot of people around the university. And Sheila, of course, while she didn’t like New Haven at all, she was very successful in New Haven. Right from the beginning, she went to work in the first campaign for Bob Giaimo, who was a long time congressperson from New Haven.

**BC**: Yes.

**HW**: And he lost that year, I guess. But anyway, she then went to work for Dick Lee. So she was, you know, she was…

**BC**: Was she in the Lee administration?

**HW**: Yes. She wrote speeches for him and did all sorts of stuff for Dick. And worked in his campaigns. She also worked for Ed Logue, and that whole disastrous renovation of downtown New Haven, and the only thing that worked was Wooster Square.

**BC**: Of course New Haven’s going through all that again, another architectural attempt to fix up New Haven and do something about access to the Sound. In my opinion, it’s too bad they’re putting in a mall, but that seems to be part of the picture.

**HW**: It seems to me it’s also stupid. The traffic will be terrible.
BC: Traffic will be terrible, and I think malls are a thing of the past.
HW: Absolutely.
BC: Let’s talk about Yale in the 1950s.
HW: It was a very hospitable place. It was, it was, uh, Yale University, in 1956, was a different institution than what it is now. And the University was pretty. There was John Blum, I think the first person who had any connection at all with Jewishness, to get tenure in Yale College. And that was around that time.
BC: Well now, Harry Shulman.
HW: No, but Yale, the Law School was different. I don’t know, whether it was always, but it certainly was different by then.
BC: Yes. Now when you arrived things were quiet politically, except for the McCarthy leftovers.
HW: Yes, the McCarthy thing was pretty much over.
BC: What was going on? What was the intellectual exchange among the faculty in the mid-to-late 1950s?
HW: Well, things were quiet. It was the post-Brown era. And there was a lot of stuff going on in law. It was intellectually quite an active, an active period. It was before the civil rights movement. So nothing was going on of much consequence politically except, you know, people got interested in the 1956 campaign, the presidential campaign.
BC: And there were some internal curricular changes, now the Divisional Program and …
HW: Right. That’s right. The establishment of it had been voted the year before.
BC: Before you came.
HW: And the year I was there was the first year that it was implemented, at least that’s my recollection.
BC: My understanding is that one of the problems with the Divisional Program was that it tended to, it was out of balance, it tended to work some people very hard and other people hardly at all, and that students were going off in several directions and leaving others behind. That was the major failure of it. Is that your recollection?
HW: Well, it was a very successful program, I think, both conceptually and in practice. It was successful in the beginning. It took an enormous amount of time.

BC: The Divisional Program was more academic, pushed the curriculum in a more academic direction.

HW: The notion was that it was very important to be able to concentrate, to go in depth into something. I mean, so it was academic in the sense that it led to a paper. So it had some of the flavors of a Ph.D., I suppose. It’s a program that requires very good students. It could never work at New York Law School. But the Yale students were good enough to make it work. The difficulty was that it took too much time, it was too intense of a program for faculty who were doing a lot of other sorts of things.

BC: Did it have enough time to work itself out? Could it have succeeded?

HW: No, I think it could have.

BC: With a little tinkering on the edges?

HW: Yes, well we tried to tinker on the edges, but the tinkering didn’t succeed. I mean it was, you know, it’s understandable. It’s just an example of the teaching and research problem, of how does faculty spend its time?

BC: Right.

HW: And my guess is, the reason it worked in the beginning was that there were a lot of young teachers who—beginning teachers who said, “Well, you know, this is what we’re supposed to do. This is what we do.”

BC: Yes.

HW: And when that whole 1956 gang got tenure, they began to say—there were other things that they wanted to do. It was too much.

BC: Yes, now the small group…

HW: The small group was also instituted at that time.

BC: And that survived.

HW: Well, that’s been a terrific success. And that survived. It now has more student help than it used to have, you know, third-year students.

BC: Right. I’ve heard it said about Rostow that what really changed the Law School, what revived the Law School, was Rostow’s sense of the student/faculty ratio. That what he had in his mind was to make a law
school where students had continuous access to faculty and where the ratio was very low.

HW: I think that’s absolutely right.

BC: Was that the ingredient?

HW: I think so, but I’m not sure that that was new with Rostow. He certainly believed in it, and he was right, and that has been the distinguishing feature of Yale Law School. And it’s worked wonderfully well. It’s been a great success because of that. I don’t know that it was Rostow’s invention, but he certainly…

BC: He stuck to it.

HW: He certainly adopted it and pushed it.

BC: Another theme during that period is the graduate program.

HW: Yes.

BC: That there was a bit of tension over the size of the graduate program and the influence of the graduate program, which ultimately, maybe this is too simplistic, but which may ultimately have led to Grant Gilmore’s departure. Do you see it that way?

HW: Well, it’s not just the graduate program, but it was McDougal and Rostow. I mean, the graduate program was a vehicle for McDougal, and it was a very successful program. It had a lot of students. Part of the requirement was that anyone coming into the program was committed to going into practice. Excuse me, not going into practice, going into law teaching. And I think the size of the program, twenty-five students, something like that, a year. In the late 1950s and early 1960s, my guess would be that, maybe, sixty to seventy percent were foreign graduate students. Many, many from the Philippines and, perhaps, others were from Korea.

BC: Was there a sense that it was too big?

HW: Well, there was a sense that McDougal was building an empire. What happened, in my recollection of the Gilmore event, this must have been, let’s see if we can place it in time. I don’t remember when Gilmore left, but my guess is it was sometime in the sixties. This must be 1963–64. There
was a move afoot to hire a number of people into the graduate program, but it was all seen as part of a McDougal empire. And Gene was supporting, Rostow was supporting it. I guess Gilmore was the most passionate opponent of this. But there were a lot of opponents. And I remember we had a meeting. I believe it was in my office and we were, we were going to stop it. Boris was there and Grant was there. There were a number of other people. Gene pushed it, but then, ultimately withdrew it. It was a proposal for a tenure appointment of someone who has been, I think, on the Supreme Court of the Philippines now.

**BC:** This was a proposal for tenure for permanent faculty positions?

**HW:** They were going to become permanent faculty. So this was to hire this person as a permanent faculty person, and then to hire other, two or three people, not as tenure track faculty, but as some kind of faculty.

**BC:** Research faculty or something.

**HW:** Research faculty, something like that. I don’t remember. But it was all to build up the McDougal program. You know the law, science, and policy program. So I don’t think it was just a graduate program, I guess, is what I’m saying.

**BC:** I see. Yes.

**HW:** I mean, I think it had to do with the notion of support on the part of the administration for this whole approach to law. And Gene’s attraction to it, I’m sure, was that he was increasingly interested in international law. That’s public international law. There wasn’t any aspect to it of private international law, of what we now call globalization and trade. That didn’t play a role in this at all. This was seen as an approach to international law and Gene, you know, wanted to be Secretary of State. And he endorsed this even though it was a peripheral and idiosyncratic approach to the whole international, the public international law area.

**BC:** Do I remember correctly that there was grant money involved? Ford Foundation comes to mind— that there was the possibility for some serious foundation money to support such a program?
HW: Maybe. There certainly was money later. There was money available for developing countries and for economic development. I don’t know that that was this. But it may very well be. I don’t know whether it was Ford money or government money, or maybe both. Whether or not this was to be funded in some way; it may well be that Ford was funding. I don’t remember the details at all of the arrangement. But it was to increase an approach to law that a number of people thought was a dead end.

BC: Yes.

HW: And the graduate program was part of it. But to just focus on it seems to me to distort what the issue was, or at least as I perceived it.

BC: Yes. So this meeting happened.

HW: This meeting happened and we were, we sort of rallied together. And Gene withdrew the proposal at some point. Something may have gone on that I didn’t know about, although I recall talking to Bittker about it and he, you know, he was very close to Grant. And he seemed to be, as I recall, bewildered by why Grant was leaving.

BC: Yes, because the program was not…

HW: It had been blocked. I mean this blocked it. Other things really led to a disenchantment on the part of a number of us with Rostow, and the thought was that it was imperative that he stop being dean now. Now we’re talking about 1964, 1965, I guess. And I know that, I know that Bittker and I called on Kingman. Went to see Brewster to make sure that Gene wasn’t going to be reappointed. He had also been sick. He had spent a year while he was dean in Cambridge, England.

BC: Oh, yes.

HW: And the place, he wasn’t really interested in the Yale Law School anymore.

BC: I just want to ask one more question about Gilmore. Had there been tensions all along between Gilmore and Rostow?

HW: I think so.
**BC:** Well I know that Boris was perplexed because it looked like everything was going to work out okay. So there must have been a longer history of other things.

**HW:** There may very well have been. I think Gilmore and Bittker started teaching at Yale in 1946, and Brown too. I think they all came in 1946.

**BC:** Right. That’s about right. Now, Lou Pollak…how did that dean search go? Is there a story there?

**HW:** Uh, yeah, there is but we can’t…

**BC:** You want to stop. Okay, we can’t tell it.

**HW:** I think we have to stop.
Second interview, July 12, 2000

BC: We were just finishing up last time with the Rostow deanship and moving on, and I wanted to ask about Fred Rodell.

HW: And you were interested in whether he played any role in Gilmore’s leaving.

BC: Right.

HW: As far as I know, none. My recollection of Rodell is limited. I saw very, very little of him, except in the early years, really early years. That is the late 1950s and early sixties. And he constantly tried to draw me into debates. His hatred of Frankfurter was—he hated Frankfurter. He saw Yale being Harvardized. Two Frankfurter law clerks had come in 1956, Alex Bickel and me. In addition there were other people who, other Harvards who were graduates of Harvard Law School, who came to the Law School, came to Yale at that time.

BC: Leon Lipson.

HW: Leon Lipson and, I don’t know. Is he the only one?

BC: I’m trying to think.

HW: I think there were others.

BC: Bickel, Wellington, Lipson.

HW: At any rate, he thought it was all terrible. So he was constantly trying to goad me and get me. And I found him a most disagreeable person and I didn’t like his work at all.

BC: Yes.

HW: On the other hand, he had a lot of students who loved him and thought that he was a wonderful fella. He’s one of the people who was rumored to have waited on the president, the first time Harry Shulman was up for the deanship of Yale, and persuaded the president, whoever that president was, it was either Seymour or Griswold, persuaded the president that this would be a horrible thing to do, because Shulman was Jewish.

BC: Do you think it was Jewish or Harvard? Shulman was a Harvard...
HW: Well, because he was Jewish and because he was Harvard, I’m sure.
BC: Oh, those things went together.
HW: Well for him. Although there is some, someone wrote something suggesting, I’m not sure whether it was Joe Bishop or someone, who wrote something suggesting that Rodell was himself Jewish, or had been, you know, the old self-loathing.
BC: Um-hum.
HW: You know all that stuff.
BC: Yes.
HW: At any rate, so I have absolutely no recollection of Rodell involved in the Gilmore affair.
BC: The other question I had was, at some point you alluded to the possible reappointment of Rostow in 1964. Was that a possibility? He had at that time already done nine plus years as dean. Could he or would he have been reappointed?
HW: You know there’s no rule.
BC: On terms.
HW: On the number of terms that one can have as dean. It has been traditional at Yale that deans at the Law School serve for two terms. And it has been traditional in the university, but it’s been, it’s a tradition that has been broken in other parts of the university but not at the Law School. My guess is that he would not be reappointed. I mean, he had been an absent dean quite a bit in his second term. Indeed when he was reappointed he was spending the year on leave. This was the fourth year, I guess, of his deanship.
BC: And he was away?
HW: He was at, yes, I think he was at Cambridge or Oxford for the year. And then he came back. And then he was really not well for a year. So, he wasn’t around a great deal. And I think I told you that I went with Boris Bittker, and this is my recollection, check it with Boris and maybe I’m wrong, to see Kingman, and this may be where it comes from, to
say that we really had enough of Rostow and he had to go. So, that may have, it may be that we were afraid that he wanted to remain as dean.

BC: Yes.

HW: Do check with Boris.

BC: Yes, yes.

HW: I’m sure you interviewed Boris.

BC: Yes, I have. Do you think that sentiment was widespread?

HW: I think so. And I should say that Gene did a great deal for the Law School. He really transformed it, both in terms of hiring and in terms of curricular reform. But that all took place in the first few years of his deanship. And they were enormously important. The Divisional Program collapsed, but it was a wonderful idea, and he hired a lot of people and on the whole they were very, very good people. And so deans should get credit for that.

BC: Yes.

HW: Since they get blamed for everything.

BC: Yes. (Laughter) Right. Well, let’s move on to the Pollak selection. What do you remember about the faculty vote and how it came up, and who else might have been considered at that point?

HW: Well, it was a process that went on for a while, and one that Brewster was heavily involved in. He appointed a committee and, I’m not entirely sure who was on that committee. My recollection is that I was secretary of the committee.

BC: Oh really…

HW: It was an all Law School committee.

BC: Is it unusual for the president to have appointed the committee?

HW: No. The committee at Yale is always appointed, I think in all parts of the university, by the president. This committee was all Law School members. And that has been the case in my experience at Yale. I suspect that Bittker was probably heavily involved, and may have been the chairman of it. And the committee went around and talked to a lot of people. There were a number of possibilities. Abe Goldstein was somebody who
was very seriously pushed by a number of people. My name got into it, but I don’t think that I was seriously thought of at that time, but perhaps. We had a number of meetings. Brewster came to those meetings. There was not a vote. He wasn’t going to have a vote. It was going to be a registration of opinion.

**BC**: Uh-huh.

**HW**: And he took registration as an opinion, and I guess my job as secretary to the committee was to count the votes. Ellen Peters and I were the two youngest members of the faculty at this time. It was clear that he wanted Lou Pollak.

**BC**: Kingman Brewster?

**HW**: Kingman.

**BC**: Yes.

**HW**: And there was some, quite a bit of opposition to Lou Pollak by a number of people. Alex Bickel was very much opposed, and I’m not exactly sure why. I think he thought he was weak, and that he would take the Law School in the wrong direction.

**BC**: Yes. There was no hint at that time of what was to come, politically, and so…

**HW**: No, absolutely not.

**BC**: Weakness or strength was merely weakness or strength. It wasn’t in the face of student revolt.

**HW**: Absolutely. Absolutely.

**BC**: Yes.

**HW**: And I wasn’t very happy about Lou. It seemed to me that he was too interested in making everybody happy. On the other hand, let me say in retrospect, I think he would have been a very good dean, if the times had continued as it was in 1965, you know, not too many people thought that the Berkeley experience would travel east and accelerate.

**BC**: Yes.

**HW**: So that wasn’t in anyone’s mind. When Brewster told me that he was going to appoint Lou, because I was mentioned (I had a relationship that
went back to Harvard and I had been involved with him at a number of different times) he had me to his house and his office to tell me that he was going to appoint Lou and that I should, you know, I should really be pleased that I wasn’t going to be dean because I had an opportunity to flower as a scholar. He drew comparisons with some people at Harvard, you know. It was very nice and I really had never expected that I would become dean. Abe, by the way, was not around at the time. He was on leave that year. I guess he was in Cambridge that year. And I think it was reported that he said he wasn’t interested in the job.

BC: Now if you were secretary to the committee, you may or may not remember what the votes were. Was there a vote taken or?

HW: No. But one of the issues that was a real issue was the authority of the faculty and the authority of the president. I mean there were these registrations of opinions but the last registration of opinion I didn’t see, I’m pretty sure. And Gene Rostow was a great champion of the fact that the faculty elected the president. Brewster took the position that the faculty appoints the president. And this was the only time that it was ever an issue. When he appointed me it wasn’t an issue. When Giamatti appointed me again it wasn’t an issue, and when he appointed Guido it wasn’t an issue.

BC: So, if I understand you correctly…

HW: Well, the faculty would defer to the president. I mean if there was someone that the president didn’t want, the faculty would accept that.

BC: The faculty wanted a good relationship with Woodbridge Hall.

HW: Yes, now there’s no doubt that Bart didn’t want Guido. I mean he hated Guido. I know he hated Guido.

BC: Really?

HW: He really didn’t like Guido at all. On the other hand, he wasn’t prepared to say that.

BC: Uh-huh.

HW: And he wasn’t prepared to really join issue with the Law School. So that, I say hate, I mean he, he really, he didn’t really like Guido. They got
along fine. When he became president, Guido had a wonderful party for him at the farm.

**BC:** But…

**HW:** But I know that he really did not like Guido.

**BC:** Yes. Well we’ll go to that, and I have a couple questions about that, but I’ll save them. When the Pollak appointment was made, was there, was there someone else that the faculty would have pushed if Brewster hadn’t wanted Pollak?

**HW:** Well, I think Abe was—there was strong support for Abe.

**BC:** Um-hum.

**HW:** But the faculty was really quite fragmented. It wasn’t a situation in which there was a natural person, except for Bittker, who didn’t want it.

**BC:** And never wanted it all the way through.

**HW:** Never wanted it. Never wanted it. And he clearly could have been dean at that time and I think that Kingman would have accepted Bittker.

**BC:** Yes.

**HW:** And this was the time when Gilmore left. And Gilmore wanted to be dean, and that wasn’t going to happen.

**BC:** Was that part of the mix here?

**HW:** You know, I’m just not sure of that. My feeling was that this was when Gilmore wanted to become dean, and when it became clear that he wasn’t going to become dean, that was when the whole Chicago thing happened.

**BC:** Yes, because some of the Gilmore story that I’ve heard seems to have more to do with issues related to McDougal.

**HW:** It all started with…with McDougal and McDougal wanting to make someone a professor who had been a student of his and so forth…

**BC:** And give him tenure.

**HW:** And give him tenure. And hire him with tenure, and Gene backing that. I mean that’s what started it.

**BC:** Right.
**HW**: Gilmore was somewhat alienated, but he thought that the school was going to hell, you know. My recollection is that he wanted to be dean. I mean that whole business with McDougal was a big thing. There were people gathering together. My recollection is that it was in my office, but Boris was a key person involved in it. I think I had an office next door to Gilmore. And I think Gilmore, I don’t know whether Gilmore was there or whether he attended or not. I just don’t remember.

**BC**: Was he a fiery personality?

**HW**: No.

**BC**: No?

**HW**: No. Not at all, I mean, he was very quiet, and I think he had powerful feelings about the institution. I know he did.

**BC**: So Pollak. So now Pollak is dean.

**HW**: Yes.

**BC**: And things are fairly quiet until the sixties roll along and begin to have rumblings from the black student’s caucus and university problems. Can you describe a little bit of that?

**HW**: Well, there was a substantial amount of it, and I’m not sure when it started but my guess is it started maybe in 1968.

**BC**: Sounds right to me.

**HW**: I was on leave Lou’s first year. So that was 1965–66. As far as I can tell things were quiet. The memoranda that I received suggested that the main problem that the school faced was that it was embarrassingly short of funds. There were all kinds of memos about how to save money; how to cut back. So there was nothing having to do with the student difficulties. Nor do I recall when I returned for the 1966–67 academic year that there was much going on. It seems to me that everything happened around the country in 1968. That was the key year, with the exception of Berkeley which had started in 1964.

**BC**: Yes.

**HW**: And I was back for the year 1966–67. But I think things began to heat up in 1968. The summer of 1964 was the beginning of the free
speech movement, but the spread of this was 1968 and it was worldwide. Stanford exploded in 1968. And Columbia and Cornell. I don’t think an awful lot happened at Yale in 1968, but I am not clear about the year. It was in that period, in the late sixties and early seventies that things began to spread to the Yale campus. If we start with the occupation of the Law School, an occupation at the courtyard, students had taken over the courtyard and had a village there.

**BC:** Now do you recollect that it was the anti-war spirit that came first and the black student’s movement came after, or the reverse?

**HW:** I think the black student difficulties came first. There was a real effort made to increase the number of blacks in the student population.

**BC:** Now that was different from the university. That issue really was not firing around in the university at that point, just the Law School.

**HW:** I think that’s right. This was a concern of the Law School. I don’t now recall whether it was also going on at other law schools at that time. It wasn’t BLSA, although there was a BLSA. This was a local organization of black students that formed itself. But the impetus for it was admissions. This was a period when there was a very substantial effort being made on the part of the school to admit blacks. And I think we admitted a group that probably, a number of African-Americans, who probably were not qualified and there was quite a lot of opposition to this happening.

**BC:** To the admissions?

**HW:** To admissions of people who, well, there was opposition to having any kind of affirmative action. My recollection is that Clyde Summers was very opposed to this. His argument being that all that that meant was we were taking people who would get into other law schools that weren’t difficult, and they would do better in those other schools, and we were going to undermine our own situation. I think he was sort of the leader of that position.

**BC:** Who else might have agreed with that?

**HW:** Well, I don’t know that anyone agreed with it in quite those terms. But there was a concern about not admitting qualified students and the
extent to which unqualified students would, you know, what would happen, what the consequences would be. Pollak would certainly have been instrumental in trying to accomplish this, and I think there was generally wide support. My feeling is that there was opposition to the implementation of any such policy. But primarily, Clyde Summers, who felt that what we were doing was admitting students who wouldn’t be qualified, and we would just be moving students from one law school to another, and that it wasn’t the right thing to do. He was very much in favor of legal education for minority students, but he thought that any sort of an affirmative action program, and this was a very, very clear affirmative action program that was introduced, was counterproductive, I don’t remember now if he had ideological difficulties of the sort that developed later.

**BC**: Was there a following for that view or do you think that he was alone?

**HW**: I think that he was pretty much alone. I just don’t remember much of a following. There was considerable concern as time went on, with the policy, and perhaps people thought about the equality issue and began to be later. The people who ended up being most concerned about this were people like Goldstein and Bickel.

**BC**: But they had supported it initially.

**HW**: Well that’s my recollection, or at least they hadn’t opposed it. I think that that’s the case. But nor do I really remember how formal was the decision to recruit blacks on an affirmative action basis, how formal the process was. I just don’t recall whether we put it finally to a vote or it was just sort of consensus. I’m not sure, and I’m sure that if you talked to other people, they probably remembered better than I do.

**BC**: Yes.

**HW**: And I think we had a number of people who, in the past, who were unqualified and who were not prepared. I mean a number. What am I talking about? I don’t know what the total African-American population was. It was probably quite small. But there were, of that, maybe a frac-
tion who really ought not to have been at this school. And I think that, combined with a general student movement that was taking place, led to the student movement. And they weren’t called BLSA. I don’t remember what they were called. They weren’t—at that time they were a separate group. They weren’t part of BLSA. The black law student organizations everywhere are called BLSA. But they were not then a part of it. They had their own acronym, which suggested they also had a full name. I just don’t remember what it was. And there was really quite a lot of stuff going on in terms of threats being made, and you know, the usual stuff.

**BC:** Did you have a sense that the Law School had more of it than the rest of the university?

**HW:** I think earlier.

**BC:** Earlier?

**HW:** My feeling is that it probably started earlier at the Law School.

**BC:** Um-hum.

**HW:** And there was a lot of support on the part of the student body for BLSA and a lot of unhappiness. I’m not sure at what point the tent went up in the courtyard, whether that was the end of Lou’s regime or the beginning of Abe’s. But the courtyard, the Law School courtyard was occupied, and there was, you know, one could open the window and smell the pot. And so that the great tent or Styrofoam dome, or whatever they had down there, was part of the occupation of the courtyard. I’m not sure when the fire in the library took place. It might have been around that time.

**BC:** And the card catalog fiasco?

**HW:** The card catalog fiasco. The meetings about this were private because you couldn’t hold meetings in the Law School, so they were at Lou’s house.

**BC:** Now, were there efforts on the part of the students to become part of meetings, to move in on them?

**HW:** Yes, student representation and the faculty. So about faculty meetings, so there was a large negotiation about what that ought to be. And
it’s interesting that Clyde Summers was very much in favor of having students fully participate.

**BC:** Oh really?

**HW:** Yes, collective bargaining model is my recollection of Clyde’s view on student participation.

**BC:** Kind of inconsistent with his…

**HW:** Well, I don’t know whether it’s inconsistent but, you know, maybe it is, maybe not. You can understand, I think, a position that favored both.

**BC:** Probably. In those days you can almost justify anything.

**HW:** Well you could, yes at any rate, there was a very strong movement. There was also a movement on the elimination of grades, and we went to the grading system that we now have.

**BC:** Was that inspired by students?

**HW:** Yes, there was a lot of student pressure. The really interesting thing that differentiates Yale, Yale Law School, from most other law schools in this country is anonymous grading, which was strongly opposed here. And I think it was, at this time, strongly opposed by the black law students. They strongly opposed anonymous grading.

**BC:** Now tell me why.

**HW:** Because, I assume they thought that non-anonymous grading would give them better grades. If it were anonymous grading the faculty wouldn’t discriminate in their favor. I assume they didn’t put it that way, but I assume that was it.

**BC:** I wonder what their public justification was. I mean it, it would be hard to take a non-discriminatory policy on one side and a discriminatory policy on the other.

**HW:** But I’m quite confident that anonymous grading would have gone through here, as it did in almost every other law school in the country, but for the fact that it was opposed by the black law students.

**BC:** Hum, that’s interesting.

**HW:** It was interesting. At any rate, I’m not sure, as I say, whether that happened at the same time the grading system was changed. But the
bulk of the student problems did take place during the latter years of Lou’s deanship. And my feeling is, he didn’t do very well with it, in part for the reasons that I mentioned to you off the tape. And that is, he was too trusting, and he was too much the total liberal. He was ineffective at that time.

BC: He must have been supportive of the Brewster approach to the problems at the university.

HW: I’m sure he was, sure he was.

BC: Was there an episode of students storming a faculty meeting or at least breaking into a faculty meeting?

HW: I think they did this, they disrupted a faculty meeting. That led to secret meetings.

BC: Secret meetings at the dean’s house.

HW: Right.

BC: Yes, 1970 approached and some faculty members were involved in the Ingalls Rink meetings, and some of the meetings having to do with the Bobby Seale trial. Where you involved in any way? Did you meet student groups or give talks to these crowds?

HW: No.

BC: You were not involved.

HW: No, I wasn’t. I certainly don’t recall a meeting with students in any kind of formal way, I mean, I had a lot of friends among the student population in those days and I mean, uh…

BC: Were you worried.

HW: Yes, I was worried.

BC: Everybody was worried.

HW: I think everyone was worried. I was in fact, very involved with many of the students, many students in those days, including Duncan Kennedy, who was a very good friend of mine as a student. And he played a leadership role.
BC: I suspect that these times were particularly painful for the Law School because the Law School’s tradition had always been to have a close relationship with students and a kind of social feeling, and so...

HW: I think that’s right.

BC: When there was a problem I think the Law School must have felt it more than the rest of the university did.

HW: Right. I think that’s quite right.

BC: So the worry came from what was happening within and also seeing what was happening outside, at Columbia, for instance, where things were pretty hot.

HW: Right. I don’t know that at any of the places that were much worse — where there was violence — that law students were at the center of it. They were involved perhaps, but I don’t know that they were at the center of things.

BC: I think not, at Columbia, not. I don’t think the Law School was at the center of it. It may have been involved. Mark Rudd is the one who comes to mind there.

HW: Absolutely.

BC: Well, we did talk earlier about Yale having done better than other institutions in this way.

HW: Yes, right.

BC: And I was speculating, trying to put words in your mouth, I guess, about how it might have been Brewster who kept the lid on, and you said well maybe. Yes and no?

HW: Well, I think Brewster, if we look at it historically, was very, extraordinarily successful. He was as successful as any president anywhere. But if you think about the great universities at the time, Yale probably suffered less. I don’t know about Princeton. I don’t know what happened at Princeton. But Kingman was just enormously successful. I think it was very high risk. And I thought it was high risk at the time. And I think, if you think about what took place, it was high risk. I mean it’s wonderful that when the bomb went off in Ingalls Rink, there was no one there. Two
hours earlier, I think, it was packed. Amazing that nothing happened, I don’t know when the Art and Architecture building had its fire…

**BC**: The Bobby Seale trial being steps away, right on campus practically, with great, huge numbers of people on the Green, and whatever element of revolt in the university, could have been explosive.

**HW**: Yes, absolutely. I mean there’s just no doubt about it. But he was right. We know he was right.

**BC**: Now we do. Let’s steam ahead to the Goldstein deanship. Is there anything you can tell me about that selection process? That sounds pretty smooth and…

**HW**: I think it was cut and dry. I don’t think there was any controversy. My recollection of it was that again, if Boris, I think, had he wanted to, he could have been dean.

**BC**: Yes. Now the thing that stands out for me, from just having heard and read about it, about the Goldstein administration is the tenure decision. Can you just describe that?

**HW**: Well, there were a number of people who had been hired, I guess during Lou’s deanship, who were coming up for tenure. There was, let’s see, there was John Healey, who made tenure and made it early.

**BC**: Oh, and then he left.

**HW**: Right. I believe, and that was no issue. And I believe that John, I believe that one of the reasons John left was because he came on with a number of people that he was quite friendly with who didn’t get tenure, and most particularly, Larry Sun was a very close friend of his. And I think he didn’t want to put himself in a position where he voted against these people. And he went to Harvard. Now that’s entirely speculation.

**BC**: Yes.

**HW**: He had been a student of mine. We’re friendly and we’ve remained in touch. You know, I haven’t seen a lot of him. He’s an interesting person to say the least. But I think that that was at least part of the reason, because he loved Yale. Why would he want to leave Yale? It just doesn’t make sense to me. But there was Lee Albert, who was a classmate of John’s
and had been editor-in-chief of the *Law Journal*. I guess there were no grades then. I think he was first in the class.

**BC:** About the tenure decisions…

**HW:** I think that there was substantial disagreement among the faculty and Abe was very strongly against these people. He led the opposition to their promotion and they left. It was a very difficult thing to do, very hard, both in law schools and in faculties of arts and sciences. The Yale Law School has now solved this problem by not hiring anybody, except with tenure. Now they’re all appointments. At that time there were very few lateral appointments that were made, a few, but very few.

**BC:** Can you tell me whether there was internal discussion about the tenure decisions, whether there were those who wanted to grant tenure to some or all of them?

**HW:** Yes, there certainly were.

**BC:** Was it a close call or was it…

**HW:** In some of the cases I think it was a close call. I think at least two of them were really quite close and divisive. And again, if we look at history, one was certainly right and one probably ended up being wrong. Well, I say one of the close calls, I think that one was not, wasn’t close and there wasn’t much support. At least, I think there was another one that was very close and divisive as well.

**BC:** Do you see this as a turning point of any kind? Was this a time when the Law School was, for lack of a better term, upgrading itself? Were they going to the next level?

**HW:** Well, I think it made it possible for the Law School to go to the next level. Yes, on the whole, it was helpful for the school and it was difficult. It was a difficult thing to do. Harvard for example, was promoting everybody. And this was a tough thing to do. What it enabled, what it made possible for the school was a number of lateral appointments of people who were just excellent. It drove us towards thinking in those terms.

**BC:** So another way to say it would be that it discouraged the notion of a junior faculty.
HW: Well, not entirely. We really needed to replace a group of people. There may have been as many as four. And then John [Healey], he was leaving. I think there were four and then John who was leaving.

BC: Yes.

HW: So that’s five people. And a feeling that that’s a generation that were all roughly the same, so we ought to look to bring people of that generation in. And that was when, you know, we hired people like Mashaw. I mean that all happened while I was dean. All that hiring took place, big hiring took place while I was dean.

BC: Yes, well, when you were dean, beginning in 1975 was the era of the collapse of graduate education in America. The professional schools were at that point, as I see it, as skimming the top, skimming the top and getting the best students. The graduate schools began their decline from which they have not yet recovered.

HW: All of that is correct. The place started to get much better, it got harder and harder to get in. It was never easy to get in, but it got harder every day. And the faculty that we were able to recruit was better. It was essential that we drew the line, you know, on balance with the exception of one person. Abe did the right thing, I have no doubt that Abe did the right thing. In regard to that person, and that’s David Trubek. I think, probably it was a mistake, a close call. David visited Harvard, you know.

BC: Yes.

HW: Do you know him?

BC: I do not know him.

HW: Well, he visited Harvard and the Harvard faculty voted him, voted tenure for him, but the president reviews all these things. And Derek Bok reviewed it, and at the ad hoc meeting, they rejected.

BC: Pretty surprising.

HW: Pretty surprising. And, I thought at the time that that was probably a mistake on Harvard’s part.

BC: Yes.
HW: I would have voted for him if he had been at Yale, knowing what I knew at the time.

BC: The Goldstein deanship lasted only five years.

HW: Yes.

BC: Why is that?

HW: Abe didn’t want it. Abe wanted out almost immediately.

BC: He had some tough years.

HW: He had some tough years, during which the financial situation wasn’t great. In the first few years there were still student problems. He kept saying it ought to be a three-year appointment like chairs of departments.

BC: The deanship?

HW: Yes. And he clearly, uh, he felt a responsibility that he didn’t like. I think he worried about the lights being turned off. You know I mean…

BC: Oh, so he got down to worrying about details.

HW: Yes, I think that, I don’t think that Abe was a very good delegator. He took it all very seriously and he found it not congenial. And there’s no question that he was not available to be dean for another term.

BC: Now, we’ve agreed that we’ll talk about your deanship the next time around, so that I don’t wear out my welcome here, but what did he say to you? Did he say, oh-oh, watch out, terrible job?

HW: No, he didn’t say that. He and I have been very good friends. I had some problems with him while he was provost, but that was inevitable, that one would have problems with a new provost. But he wanted to be as helpful as he possibly could.
BC: Okay, today is December 1, 2000. And this is our third meeting. There may need to be a fourth meeting but, maybe not. We’ll see how we do today.

HW: We are now, I guess, at my deanship.

BC: Yes.

HW: As I said, during most of the period money was tight. You had asked me whether I enjoyed it, I said pretty much, most of it, but the part I liked least was dealing with the central administration and the fact that provosts kept turning up. So you had to deal with the provosts. The Law School was not yet independent.

BC: Was the idea that you would have liked to have…

HW: That was the idea that I certainly wanted. But it was the wrong time because the market wasn’t good. You go through that negotiation when things are looking promising. We had a lot of problems. I had problems with salaries, with all sorts of things. It was just a pain in the neck. But I worked it all out so the last, I guess, five years were better. Really quite, uh, you know it was fine.

BC: Yes.

HW: The most attractive part of the deanship for me was the opportunity to hire people. And we failed to promote five people. So most of our hiring, much of our hiring was lateral. And this is something that has continued.

BC: Yes.

HW: We’d have someone visit for a year, as a general proposition, and then we’d decide we’re not going to keep the person. In some cases we brought them directly because they wouldn’t come for a year. Sixty percent of the faculty, at the end of the ten years, was new faculty that came during this period.

BC: Oh my!

HW: So it was very, very successful.
BC:  Sixty percent. So those were very active recruiting years.
HW:  Yes. And that’s the bulk of the faculty now.
BC:  Were those appointments pretty easy? I mean with the faculty?
HW:  Yes. We were fortunate. We had problems in attracting dual-career families. One of my problems with the central university was not getting them to be interested in New Haven and in spouses. I mean my interest was, my interest had to do with spouses. We lost a very good woman because there was no good job for her husband. We lost a number of good men because there was nothing for the spouse. Anyway, it was a period in which we certainly tried very hard to increase the presence of women on the faculty. One of the big problems was that many of the very good women did not want to go to law teaching. That’s not where the power was. The power was in practice. We got a lot of that really.
BC:  Perhaps this is an anti-feminist comment, but I would have thought that law teaching would have fit women’s temperaments better than practice?
HW:  I can give you an example of a student of mine who was very successful as a law student, Judith Miller, who went to a major Washington law firm and became a partner. She became General Counsel in the Department of Defense. A terrific person. Would have been a good teacher. She just decided not to come. She said I’d love to do it, but … There were a number of others, too. So, I was less successful in bringing in women than I hoped it would be. It’s become much easier, I think. Women are more inclined to come in.
BC:  Can you talk about lateral appointments?
HW:  Yale has adopted a policy of hiring almost only laterals.
BC:  When Tony Kronman became dean, one of the things he said he wanted to do was to hire more junior faculty.
HW:  But he hasn’t done it. They’ve hired one person, as I see, because I get everything from there. They’re having someone come through this month for an interview.
**BC:** To me, it seems like the perfect way to go. It gets you off the tenure hook.

**HW:** It makes a great deal of sense.

**BC:** And it brings spirit in. I don’t mean to say that it’s the only way to deal with the tenure issue. It also brings in new people in a kind of rotation. It’s enlivening.

**HW:** The issue is with young faculty. If you wait for someone to get tenure, even in a law school, then they are close to forty. Yale has done some experimentation with people who look very promising.

**BC:** Let me ask two questions that I wanted to try and get in today. One is, can you describe the social life among the faculty during your deanship? Was there conviviality?

**HW:** I had the sense that it went very well. You bring a lot of new people on and it changes the dynamic. I think there was quite a lot of social life going on. Being dean, it separates you a little bit. But all sorts of workshops began and that was relatively new. But I thought the faculty got along remarkably well.

**BC:** My other question was about coming here to New York Law School.

**HW:** Well, it’s complicated. The year I stopped being dean, the then dean here (a former student) asked me if I’d be interested in coming here, maybe to do just a little teaching, do a workshop, etc. I wanted to get out of New Haven for personal reasons, but be near New Haven, and commuting between the two did not appeal to me, so I said yes. I got involved and found it an agreeable place with a lot of problems. And after that I went on the board of trustees. They were looking for a dean and I was then just teaching and enjoying writing. It was a nice time for me. I spent thirty-five years at Yale and this was the other side of legal education. Why not give it a shot? What did I have to lose? It gave me an apartment in New York, and I love New York, so those were my thoughts.

**BC:** Yes.
HW: It was not my expectation that I would lose my life in New Haven. As it turns out, I have. So I gave up more than I expected to give up, but on the other hand, I have enjoyed being in the city.

BC: You’re happy with the work?

HW: The job was very much harder than I anticipated and I have stayed on longer than I should have. I should have quit after five years. Next year I will teach a semester at Yale.

BC: Oh good. What will you be teaching?

HW: I am going to teach a course on religion and the law.

BC: A semester?

HW: Yes. I know nothing about it, of course.

BC: Why don’t you teach a course on Frankfurter?

HW: Course on Frankfurter? I don’t know that I’d have anything much to say…

BC: Let’s go back briefly and finish our early conversation about the Pollak and Goldstein deanship. I was suggesting that Lou Pollak may not have been up to the deanship at such a challenging time—that his temperament may not have fit the tumultuousness of the anti-war era.

HW: That sounds like the conventional wisdom. Whether it is the case or not, I don’t know. I don’t know how much people like Clayton Byers were in the background or the deputy dean. I don’t know to what extent they were involved in management or in working with Lou. It looked as if the laissez-faire, the non-interventionist, the let-things-run-its-course, had to do with ambivalence on Pollak’s part rather than policy. But I don’t know. It looked as if he was too trusting and too much the liberal and too embracing and found it difficult to be in opposition. So, anything that looked authoritarian, or looked like it was top down, he found difficult. He couldn’t make decisions but it may be that it actually was a decision in support. So, the conventional wisdom would be that he vacillated, couldn’t do anything.

BC: Yes.

HW: Lou, let me say, is not a weak person in any way.
BC: Yes.

HW: I remember my being at a meeting at one point in the faculty lounge involving the Black Law Students Association, and they had come to a faculty meeting, and Lou not being able to respond at all. They had invaded the meeting and I was involved heavily in responding to them.

BC: What happened there? Were they admitted into the meeting?

HW: They just came in. They just walked into the meeting.

BC: About how many of them? Eleven or so, I think I heard?

HW: Yes. I’m not sure I remember what they wanted. That’s what it looked like. And that’s what led to holding meetings off campus.

BC: Was there an element of fear? Did anybody say, we could be in trouble here? We could end up like Columbia. Were there comparisons being made?

HW: Well, absolutely. And there was a lot of movement out of the Law School, Bobby Seale, into the university as the 1970s started and there was occupation of some buildings, student sit-ins. And moving towards Brewster’s policy, the large policy decision of opening up the university. There was a lot of criticism by a number of people.

BC: Yes. People say that decision saved the university from a more difficult situation.

HW: I think that’s right. It was a very touchy situation. We had a fire in the Law School library.

BC: Yes, oh yes.

HW: It was pretty clearly set by someone. It was all pretty high risk at the university, and whether he [Brewster] realized the risk…My involvement with the university, what was going on in the university, was very extensive at that time. I had been a student of Brewster’s at Harvard, you remember.

BC: Were you in contact with Brewster during those days? You knew what was on his mind?
HW: I wasn’t close to him in the way John Blum was. I’m sure John was…I think that Eli Clark…he was Master at Silliman during this time. I think he was close to Kingman. He’s somebody you should talk to.

BC: Yes, I did, it was a number of years ago, so I have to review that transcript. My sense is, and you might comment on this, that Kingman Brewster in feeding the folks on the Green, by opening up the colleges and feeding the folks there, he may have distracted them from any mischief that may have happened, and so they had a meal instead!

HW: Well, I don’t know. Whatever it was, it worked. He also made a lot of alumni unhappy with the statement that he made about blacks not being able to get a fair trial. And I think Goldstein, Bickel, and probably Bork were all very unhappy about what he was doing.

BC: You think Goldstein was unhappy?

HW: I’m pretty sure. That he was being too permissive. I recall walking to work one day down Hillhouse Avenue and he beckoned…

BC: Brewster?

HW: Yes, Brewster came out and called me. He had a large number of faculty there, mainly from Arts and Sciences, and they met all day to talk about matters. And I must say, I thought he listened to a lot of people, and there were a variety of points of view. On the whole, I think there was strong support for not forcing issues from the faculty of Arts and Sciences. And that comes only from that meeting, and I don’t know how all these people all got there. I don’t think they were walking down the street and just got called in. I mean, he had a houseful.

BC: Yes. (Laughs). One thing I take from that is that Brewster did not lean heavily on the Law School.

HW: As far as I know. Abe was the dean and the deans met once a week with him. Eli was close to him. Whether there was anyone else who he talked to, I don’t know. My involvement, I spent that day there, I would see him from time to time, once in a while he would call me, but I was not one of those involved in setting university policy, not a kitchen cabinet or anything of that sort. I don’t know anyone in the Law School who was.
If anyone would have, I suppose I would. I had a long association with him, had been on the social science tenure committee and things of that sort.

**BC:** Was he teaching at the Law School?

**HW:** He had an appointment but wasn’t teaching.

**BC:** During Goldstein’s deanship, were you thinking, well maybe I’ll be dean? How did it happen that the deanship became the next step for you?

**HW:** When Pollak became dean, I had been mentioned and so it was sort of around. And during Abe’s deanship, I was very active in the institution. It was out there.

**BC:** And Abe didn’t want to continue?

**HW:** Abe really didn’t want it. He said it ought to be like the chairmanship of a department … three years was enough. I think he found it very taxing. It was a hard time, no doubt about that. The student unrest peaked during his deanship.

**BC:** I think we’re reaching the end of the tape.

**HW:** Yes, it seems time to stop.

**BC:** Thank you for your time and these fascinating thoughts.

[End of interview]