

Yale Law School
Oral History Series

A CONVERSATION WITH
LEON LIPSON

Interviewed by Bonnie Collier

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

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

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

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

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

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

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

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

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

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

LEON LIPSON (1921-2005) was a member of the Yale Law School faculty from 1957 until his retirement in 1992, having been appointed the Henry R. Luce Professor of Jurisprudence in 1997. A graduate of Harvard and Harvard Law School (1950), Lipson also held a graduate degree in Slavic Languages and Literature from Harvard. His fields of interest were comparative and international law, specifically Soviet law, and the law of outer space.

Leon Lipson

June 6, 1996

BONNIE COLLIER: Let's start with a brief biographical sketch.

LEON LIPSON: I was born in 1921 in Massachusetts and went to public schools there, including high school. I went to the best local college, which happened to be Harvard College, graduated very young, was admitted to Harvard Law School, spent a year there. Didn't like it at all, but got through the year. The war had come. I was pretty sure I'd be rejected on physical grounds for military service, but I wanted to do something about serving in the war, so I shifted from law school to Slavic studies. In college I'd taken a couple of courses in the Russian Language and in East European history.

Went to Harvard Graduate School in 1942 to '43, got an MA in Slavic studies. Looked around for a job in Washington, using my training, which I vainly thought was unusual and valuable.

I was in the Foreign Economic Administration, chiefly working on economic and political analysis of central Europe from early 1944 until early 1946. Went with the War Department to Germany as a civilian employee of military government in the headquarters of the U.S. military government, which were located in Berlin, working mainly on problems then known as restitution. Not restitution to victims of Nazi persecution like Jews, but restitution of identifiable personal property to the residents of countries formerly occupied by Germany and Austria. That meant occasionally working with the three other occupying powers, Russia or the Soviet Union, Britain, and France.

So I was a member of some low-level international committees, chairman one month, a rotating month. I was then about twenty-four. Worked there from January or February of 1946 to May of 1947. Came back, went to law school all over again. Was graduated from Harvard Law School in

1950. Went to work in New York for a New York law firm, but shifted to the Washington office of that firm a few months thereafter because they had an urgent need for someone who could handle French, and I represented a number of arms of the French government on various matters for a while, but I also did other things in practice. Stayed with that firm for six years, practicing loyalty security matters, price controls during the Korean period, trade policy matters, mostly on the low tariff side, some anti-trust work, some work for Pan-American which was the first client in the glory days of Pan-American. Working closely much of that time with the founding partner of the law firm who was in the Washington office – that was George Ball. That’s another long story with lots of sub-stories.

Was approached in 1955 by friends who hoped to recruit me to Yale. I had been thinking I wanted to teach sometime, somewhere, but not yet. Like St. Augustine’s Prayer: Make me continent and chaste, but not yet. But the opportunity came. I thought I’d never find a better one, though maybe it would leave me time to make some more money, but I wasn’t all that interested in that, and I accepted the idea of flatter income trajectory.

Decided after weeks of dithering to shift from practice to teaching. Gave the firm, oh, something like ten or eleven months notice in the vain expectation that they could fill my shoes and in December 1956 moved here. I’ve been on the payroll here since January 1957, starting in the spring semester.

BC: What was your impression of the Yale Law School? How did you see it, for instance, in comparison to Harvard then?

LL: My only personal acquaintance with Yale Law School, leaving aside Dean Rostow and one of the faculty members which I’ll come to a little later, was with several of their high-ranking graduates: Bill Packer, Bayless Manning, Adam Yarmolinsky, Lou Pollak, and a few others. A most unrepresentative slice of anything since they were so good, but they struck me as not only bright, but alert and comfortable with lateral thinking in ways that their counterparts, known as fellow students at Harvard,

couldn't quite cope with. I thought that a school that turned out people like that, or didn't turn them off, must be quite a school.

When I first came here, knowing virtually no one on the faculty, I wasn't so much struck by the differences between Harvard and Yale. I hadn't known people on the Harvard faculty, either, as a student. I was struck rather by the differences between practice and teaching, some of which have continued. Not only, of course, is the pay less, and it grows lesser and lesser in comparison as the time goes on, but services are miserable compared with what's available in a decent law firm. That's been so for the past thirty-seven to thirty-eight years. Secretarial, custodial, logistical, whatever, you name it, we do it badly.

BC: Yes, that's probably right but the life is pleasant.

LL: The life is pleasant. I wanted the opportunity, the incentive, and to some extent even the pressure to put something down in writing now and then, which I've done – which I did. I was struck, as many such recruits are, by the apparent triviality of the issues discussed in faculty meetings compared with the matters of moment considered in law practice. It's all a matter of context.

Now, it was obvious that the student body at Yale was one-third the size of the student body at Harvard, that the quality of the Yale student body, while not quite equal – taking the student body as a whole to the quality of the top third of the student body at Harvard – was still quite high and much higher on average than the entire student body at Harvard taken on average.

The faculty was not proportionately bigger. If the student body was three times as large at Harvard as it was Yale, the faculty was maybe twice as large or one and three-quarters at Harvard as at Yale. That meant from the student's perspective there were fewer students per faculty, which was a good thing from that standpoint. At the same time, in absolute numbers, of course, Harvard had more faculty, meaning that for any given technical legal issue, you were more apt to find somebody for one-and-a-half people who knew the subject backwards and forwards at Harvard than Yale.

BC: But classes tended to be smaller at Yale?

LL: Oh, yes. Now one of the things that made joining Yale at this time in the mid-1950s apparently attractive was that they were in renaissance. Your records will check if I am grossly inaccurate. My impression is that the Yale faculty, always small, had been further reduced in the period 1953, 1954, 1955 by various things. It's an accumulation of separate stories like the Countryman business and some others. Deaths, retirements, whatever. Harry Shulman, the dean who suffered through the Countryman affair, himself fell ill of cancer and died after a very short tenure as dean. What with one thing and another, the Yale faculty was down to somewhere like sixteen by the end of 1954, beginning of 1955.

The Rostow deanship, ushered in with the blessing of Whitney Griswold and a dowry from the Ford Foundation, gave Rostow at the start of his honeymoon period a chance to recruit very largely. He did. Within two years, the regular faculty was augmented from sixteen to twenty-eight.

That's an enormous bolus to swallow. There we all were, some from practice, some from teaching, some from government, making our way somehow, some with sponsors and friends on the faculty, some without. That was a time when Rostow was able to orchestrate a number of things in the school and in the university, thanks largely to Griswold.

BC: They worked well together, were friends?

LL: The twelve?

BC: No, Griswold and Rostow.

LL: Very close. Griswold had a kind of kitchen cabinet and Gene was a member of that. That's complicated because the grand over-riding shadow from the standpoint of Yale and the board of trustees for the Law School, the overreaching shadow for the Law School was Dean Acheson. While Dean patronized Rostow, he patronized.

Still and all, in 1958 the issue arose, "What about these twelve? Who stays and who goes?" It was a characteristic of certain aspects of the 1950s that the answer, found and pushed through by Rostow was, "All of them stay." All twelve were promoted, not in a single university trustee's action. That would have been too much, but in three installments, it being clear

from the beginning that all twelve were in and all twelve went onto the governing board at the same time, even though on the records of the secretary of the university some were professors a year ahead of others.

BC: How was the schedule organized? Three, three, three, and three?

LL: Four, four, and four.

BC: How did the strategy work out?

LL: I never knew in detail. I think Rostow manipulated that to satisfy some of his faculty members who may have been doubtful that all twelve should be kept by preferring their pigeons to others in the yearly slot, but there were no hitches. Nobody went back on the deal. The university didn't and the Law School didn't, and all twelve survived, and all twelve were promoted. I should also say, though I'm probably not the best witness because I'm not really adept in corridor gossip (unlike Ralph Winter or Guido Calabresi), so I'll never be a judge. But as far as I know, among the twelve, nobody sought to advance his own position at the expense of any one of the other eleven.

BC: Were these twelve generally friends?

LL: No. No, some were close; some were barely acquainted with one another. Some became well-acquainted and some never did. I was on cordial relations with all eleven, I think, and so probably everybody else could have said the same. My own closest in that group were Pollak, Manning, and Abe Goldstein.

BC: When you first came to the Law School, what was the feeling of the place?

LL: It seemed to me that there wasn't much in the way of institutional community. We had nothing like the series of colloquia and workshops that are around now: Legal Theory Workshop, Law and Economic Organization Workshop, Human Rights Workshop. Nothing like that for a long time.

Some of the twelve gradually developed connections outside the Law School within Yale to the various colleges or to various curricular programs. I'd say that started happening on a substantial scale until about 1961 to 1962. There was a certain amount of obligatory entertaining where you,

especially the seniors, would do their part with the juniors to see to it that they somehow got around, but even so some juniors felt that they were being neglected while others felt they didn't need what they were given.

BC: How about relationships with students, faculty-student friendships, connections?

LL: I'm not a good witness. My impression is that it varied, just as it had varied at Harvard. Some faculty members had favorites or developed them. Fred Rodell had students who would do papers for him in his legal writing courses and, if they did well, he would be apt to treat them very kindly. Now, Fred had his own characteristics. Some of the papers he would ask for were parodies of the teaching style of this and that other colleague.

BC: Is that right? That's interesting. Was he generally a congenial colleague, Rodell?

LL: Fred was a part of the beached New Deal contingent. So he was a close friend of some of them, but not of others. While the decision about whom to promote was pending, Fred walked into my office, the first time I'd exchanged more than five words with him in two years I'd been here, and he said, "I just wanted you to know that I read your stuff and I think it's beautiful and I'm for you all the way for anything, deanship included," and left. The first thing that popped through my mind was the story about Metternich at the Congress of Vienna planning the day's strategy with his office staff, and a messenger brought in word that the Russian ambassador had just died, and Metternich said, "Died, what could he have meant by that?"

Fred took a highly moral line on every possible subject. His detractors thought it was all pretense and manipulation, and there was something in that. Let's just say he grew increasingly unwell.

BC: Now, you first came in the late 1950s, can you comment about the Cold War, McCarthyism, some of the political sense about that era in the Law School?

LL: There wasn't much. I stayed out of it, partly because – as I don't remember whether I told you – the one faculty member I'd gotten to know before joining the faculty was my client in a loyalty security matter. I kept this quiet for about twenty-five years until it was made public by Myres McDougal. The client was Harold Lasswell, and he had come to see me through common friends while I was in practice. I went into his charges, and it went the way loyalty security cases worked in those days.

Since you couldn't successfully challenge it on Constitutional grounds without years of worry and humiliation and expense, and since the charges in their literal signification were true most of the time, if the charge was your client had a shelf of Marxist books when he was a graduate student at Berkeley in 1931, it was true. If the charge was your client was a chess-playing crony of "Zilch," who had since defected to Red China and is even now working for Red China, it was true. What you had to do was assist the reviewing board, which already would have ruled against your client, usually before he became your client, to understand your client's political positions and history in such a way as to remove the stain that they thought was on it from the true charges, which had been visited on them in the initial accusations.

That meant spending a lot of time with the client, working with him on the political autobiography with supporting affidavits, the political autobiography sometimes running to the number of 100 to 125 pages. Lasswell was one of those whom I advised in this way.

BC: What about you? Given your scholarly and teaching interests, were you not also someone who needed some protection?

LL: No, the question didn't arise. In fact, it arose in a different way. Cut. [tape turned off] Every year, I think, maybe every two years there was a meeting held, usually at Yale, of a society devoted to the preservation and perpetuation of the ideas of Harold Lasswell under some other name. On one such occasion I was asked to address the group. I was introduced by Myres McDougal and, in the course of the introduction, Mac – who

sometimes goes on automatic pilot – told them that I had won a loyalty security case for Harold.

BC: Did that become a point of discussion or did it just slide right by?

LL: It just died, but there it was out in the open, so I'm no longer bound by anything, though I don't talk about the details, of course.

BC: The Countryman tenure.

LL: Before my time. During the time that I was being romanced to join the school, the Countryman episode was still rippling or echoing and somebody or other, maybe Rostow, sent me a number of documents from Shulman and others about the situation. I don't know the rights and wrongs of it, but it was a big enough matter so that people not only ranged on opposite sides of it, but they determined their position sometimes without reference to what they thought about the merits of the Countryman matter, but simply because they were on opposite sides of other people.

BC: Maybe you could say a few more words about the Rostow deanship.

LL: He was able to preside over an increase in the Yale Law School faculty from sixteen to twenty-eight. He was Yale through and through in the sense that he'd gone to Yale College and Yale Law School, *Yale Law Journal*, and the Yale faculty. No Yale patriots could accuse him of selling out to Harvard, though there were some people who would have liked to do that, Rodell included, to make that accusation.

Rostow had or could summon money to solve a lot of problems. Not over lavishly, but with some generosity. This suited Rostow's temperament, which was a yeah-sayer, not a nay-sayer. All of that worked well just about through the end of his first term, which was 1955 to 1960, and in 1960 came a second five-year term, and that was the time when the nephews began amputating the uncle at, shall I say decorously, the ankle. Different people found different issues. Gilmore found one kind of issue. Bickel found another kind of issue. The disgruntled New Dealers revived their suspicions about Harvard.

BC: This would be after 1960 by and large?

LL: Yes, just about. Just about. I learned much later in gossip that my tenure vote was the only one that had gone through without opposition because on all the rest someone was against it, even if only Rodell. Now, I knew enough about Rodell to be sure of the reason for that. It had nothing to do with whether he liked my work or not. He wanted to have credit for not being opposed to that Harvard man, in order to be opposed to other Harvard men.

BC: Oh, I see. So you were the one he was not opposed to.

LL: That's right.

BC: Tell me something about what your expectations were for your students' futures. Did you have the sense that you were training lawyers or scholars?

LL: I thought at the time that while a higher percentage of the Yale student body would end up teaching law than the percentage of the Harvard student body, it wouldn't be overwhelmingly higher. I thought that snapshots of what happened to our graduates were misleading, if you looked only at the first two, three, four years because the first two, three, four years were the period of what a sociologist would call the circulation of the junior professional elite. A growing economy, people with individual assurance that they could find a good niche when they decided to stop rolling, and they would roll about interning in government, trying law practice, and teaching in a big city or whatever. Then at the end of that period of musical chairs, they would come to roost, most of them, at law firms but with a somewhat different, broader perspective than the same numbers of Harvard people, let alone Columbia or Stanford or Berkley.

BC: Switching just a little bit, in an earlier era here in the 1930s, I've read and have been told that the dean or some administrative person would arrange for a kind of seminar for the Jewish students to talk to them about their futures in major law firms. Later in the 1950s and early 1960s what was the situation here for Jewish students?

LL: I don't think I ever knew directly. Gene tended toward a broadly integrationist attitude, whether it was gentile-Jewish or white-black. At

Harvard there was certainly nothing overt. I do remember when considering what law firm to try to offer my services to, given that I wanted to try New York, deciding that I wanted a firm which was not predominantly gentile with a couple of Jews to do the financial work, but a decent mix. Firms with a good reputation and a rising trajectory and a decent mix were not all that common.

BC: Was that a topic of discussion among faculty and students? Was that articulated?

LL: A little bit, but there's something that I haven't got across. This is historically important. We're talking about my last year in law school, which was 1949-1950. The class of 1950 at the Law School was about one-half straight through from college and one-half deflected by the war, either by military service or something else. The half that was deflected by the war was three, four, six, seven years older than the other half and this older half, let's call it the veterans half, though they weren't all literally veterans, treated the institutional concerns of the student body or the Law School itself as something sort of childlike and dismissible. They wanted to get the hell out, go and work.

BC: Yes, get to it.

LL: Did anybody ever tell you the story about Underhill Moore and the degrees?

BC: Well, I know about the traffic tickets!

LL: No, no, [unclear]. Cut. [tape turned off]

BC: Okay.

LL: Rostow's deanship extended from spring 1955 to spring 1965 and the decision that he should be dean must have been made therefore in late 1954. I began employment in January 1957 and was committed to join Yale in late 1955, but I knew nothing of the divisions that you spoke of until after I arrived and, by that time, positions were partly hardened and partly weakened. So my impressions are rather tardy and rather secondhand.

On the one side was a well-disposed majority, measured by intensity as well as numbers. They were for Rostow, not uncritically, and that's what accounted, aside from the recruits of the class of 1956 itself, for the era of good feeling in 1956-1959. The people who were dean's men at that time were Bittker, Brown, Gilmore and they were important intellectually, as well as temperamentally.

There were some who might be considered vestiges of the New Deal and late 1930s, early 1940s, liberalism. I take it this was true, had been true of Walt Hamilton, had been true of Thurman Arnold. All New Dealers would include preeminently Tommy Emerson and to some extent Charles Clark, Eli's father.

There was a curious group who thought of themselves as loyal to the old progressive Yale and not to the new infiltrating Harvard which they associated with Rostow. Some of these had associations with or preened themselves on some association with – [end of side 1, tape 1]

LL: I was speaking of those who fancied themselves somehow clued into the real world of legal realistic America, the world outside of New England and effete intellectual liberalism. This included J.W. Moore, an Arizona Republican – a Montana Republican, excuse me. Arizona was a little different. From Arizona was a far New Deal Democrat, that is Bill Douglas, but he had ties – he is no longer at the Law School, of course, but he had ties with some of these people. Dick Donnelly was in that group in a way. Myres McDougal was a special case. He came from northern Mississippi. His father had been a physician who had delivered half the babies in the county, and Mac always had and when necessary could deploy and exploit the talents of a courthouse back-slapper.

BC: I thought you were going to say he could deliver a baby if he had to.

LL: I wouldn't have put it past him. He had got international law religion working in Lend Lease during and shortly after the war and then for war relief, UNWR, I guess it is. It was in the mid-1940s that he met and forged a lifelong alliance with Harold Lasswell, a political scientist who had settled in Chicago and was a tireless system builder, theoretician.

Lasswell owed his coming to Yale more than anybody else to Myres McDougal, but once he got here while he worked loyally with Mac, he was I think something of a disappointment to some people including, I believe to Mac, in that he treated the Law School not as a theater, but a base from which to operate. Lasswell thought of himself as preeminently a theoretician of power. The Law School was the storehouse of kernels of power for the country. Every law school, but some more than others and Yale more than any, and that was part of what attracted Lasswell. Though he was not a lawyer, he was if anything a political psychologist, and his tenure was in the political science department.

McDougal had a number of 1940 vintage New Deal principles and aspirations, and in some ways you could treat him as a New Dealer, but he was also close to the people in the Law School who were somewhat disaffected by Gene. Although Mac got along with Gene very well and Gene deferred to him over and over, intimidated in my opinion by Mac's indefatigable production and claims to fundamental theoretical novelty.

Once Mac took a year off from the Law School to serve as president of some national association, I think the American Society of International Law. Gene tendered him a dinner, luncheon, bought a print watercolor of the old Yale and asked me to present it to Mac at the luncheon, which I did. In the course of that I paid tribute to Mac to say, "He is the author, single or joint, of some 6,000 published pages, many of them different."

Mac and I had an edgy relationship, especially given the fact that I came without tenure and worked in his field, partly in his field. Rostow told me much later that he was quite worried about that. Mac and I collaborated on an article, which became rather influential, about outer space. The tension about the article was of two kinds. One was what should be said and how we should say it, and the other was the sequence of authors' names. That tension was mainly diffused because I told Mac, who was sadly about to go along with the convention that alphabetical order governed, told him that because Mac had been working in this field, it was going to be in the American Journal of International Law of which

he had a lot to do, he would go first. He was by far the most senior and the best known. If we wanted our views to have the maximum impact, then they should be associated with him, and he should stand behind it.

BC: So that's the way it was.

LL: Yes. Cut. [tape turned off] Mac carried a torch for the integration of social sciences and law, but that took mostly the form of manifestos and methodological declarations, rather than work on the social sciences and law. Moreover, I had the feeling that Mac felt that he had paid his debt to the social science imperative by his lifelong collaboration with Harold Lasswell, who was at the center of social science, as most people thought whether rightly or wrongly.

Harold didn't do a great deal of social science work in the quantitative sense either. He had done some interesting work as a young man in political psychology. He was interested in politics and psychoanalysis very early, had connections with the William Melanson Hoyt school of psychiatrists and so on.

Harold became very successful quite young and allowed his success not to slow him down. He was never lazy, he worked hard, but to channel him away from exploration and into cartography. If you went to Harold and said, "Harold, I've got an interesting idea. What can I do with it?" Harold was unfailingly constructive. He'd say, "We have a group that is considering that," never knew who the "we" was, but you got the sense that life was just teaming with little groups, of which Harold was a member. But he wouldn't do this exclusively. He would tell you about "Zilch," over in Michigan or so and so in San Diego who had done some interesting work on a related field and, "You should get together with him." He did this for a lot of people.

BC: He was a broker.

LL: He was a broker, but a substantive broker. That is, he made profits like a principal. He was ambassador from everywhere to everywhere else, so the content analyst would say, "Well, he doesn't do a lot of work in content analysis, but he is apparently very adept at normative legal

theory,” and the legal scholars would say, “Well he’s not really in the law, but I understand that he’s a whiz with methods of content analysis.” He played this border game over and over, never quite cheating.

BC: Was he liked personally?

LL: He puzzled people. They couldn’t understand him. He affected a very abstract form of speech, which some people couldn’t understand, and which some people thought was obfuscation. I’ll tell you a little story about that.

When Harold turned fifty he was tendered a dinner in New York City in 1952. I wasn’t at the Law School, but Harold was my client, and I was invited to the dinner, which was an intellectually fancy affair. The master of ceremonies was Leo Rosten, *The Education of Hyman Kaplan*, *The Joys of Yiddish*, all that?

BC: Yes.

LL: And tributes were paid by a number of people, intellectually at least equal to Harold, and in my opinion several of them superior. One of the tributaries was Margaret Mead. Among the things she said was, number one “During the war I never boarded a plane, a bus, or a train without hoping I’d meet Harold, and quite often my hopes were realized.” The second thing she said was, “In my work I’ve done a good deal of research that is incremental to what already existed from me or others, but on a very few occasions I’ve found myself breaking through as though hacking through a forest into an unknown but very promising clearing, where I was the first to look at the scene, and each time after a while I noticed that Harold was there before me.” The third thing she said was, “There’s been a lot of talk and pleasantry about Harold’s lingo. Well, yes it is heavy. You better be careful. I had a discussion not long ago with Harold. We were disputing something. Harold chose to speak in that lingo and began soaring off and after a few minutes I said to him, ‘Look Harold, I know you’re good with that stuff and you know I know you’re good with that stuff, and you know I understand it, so why don’t you give it to me straight?’ Well, Harold gave it to me straight, and then I realized what the function of that lingo was. The function of the lingo is to slow

things down so that the rest of us can catch up with him.” Now, of course that’s a fiftieth birthday banquet tribute, but still...

BC: Great stories. What was his relationship with Tom Emerson? Others?

UL: Lasswell? I don’t really know, but I think he probably had a personal friendship. I’ll give you one example of Harold’s presence of mind. October 1964, central Law School staircase, Harold must have been coming down and Harry would have been going up. Harry was the source of the story. Harry said, “Hey Harold, in the student lounge the TV had the news that Khrushchev has been thrown out,” and Harold, keeping his jaws tightly closed as he often did on such occasions, said, “Oh, they announced it today, did they?”

Mac wasn’t anywhere near as nimble, but Mac worked his way through his system with its eight that’s and its seven thises and its five thoses. Characteristically, students who chose to study with Mac would be put through the ringer. If they repudiated the whole thing, he bore them no ill will; if they decided they wanted to follow the system then God help them, because they had to do it just right.

BC: Was the weeding out process pretty severe?

UL: Well, he could be rather cutting, but he wasn’t an unkind man at all. I told you that we worked together on an article. I had given him an intermediate draft from the typist and then went to see him to see whether he had made any comments. He had a few, but not terribly vital ones, but I saw that there were marginal notes up and down the left margin of the manuscript page and I asked him if I could see those, and he was rather embarrassed, but then showed it to me. This article I had drafted, and I maintained the position of draftsman throughout our editorial process, and it wasn’t in McDougal-Lasswell lingo. Mac didn’t insist that it should be, but one of the student associates, a foreigner who was more royalist than the king, and thought that the article really declined from the standard. What he had done, the student, was to put in the margin at the appropriate point the McDougal-Lasswell term that corresponded to what was in the main text.

BC: So those were not McDougal's notes, they were the student's?

LL: That's right, but he was a little embarrassed by it. McDougal had somebody he couldn't stand in the Law School of equal seniority and that was Fritz Kessler. He couldn't stand that Fritz was more attractive in some ways. He couldn't stand that Fritz seemed elaborately courteous and helpful. I was working in contracts, as well as in international law, so I was one of the bones of contention between the two.

Fritz was an anti-system professor from Southwest Germany whose manners and reflexes were Prussian, though Prussia had nothing to do with his original training, as far as I know. The person who built up the field of contracts was Grant Gilmore, assisted by Fritz of course, and by Ellen Peters.

BC: Let's talk about what was going on when you first arrived at the Law School.

LL: In the 1957-1958 period after the twelve recruits were put on board, the focus in the Law School curricular planning turned to the divisional program. The principal architects of the divisional program, it seemed to me, though much of this had been done before I arrived, were Gilmore and Ralph Brown. What went into the divisional program was a variety of impulses. One was how do you get sequentiality into the courses. You don't necessarily want to establish rigid tracks of concentration, but you don't want, in the usual law school way which applies even today, to have the kind of cafeteria where everybody could take anything at any time in his career.

Another was to reproduce or assimilate, to approximate something like concentration. You didn't have a major. At every stage there was political opposition. Some people wanted the divisional program to be maximum, using as large a slice of the second half of the second year as was available. Some people wanted a minimum, which was if you wanted to take something in division 10, go ahead, but you didn't have to, you could take something else. Correspondingly, members of the faculty could devote very long hours to working on the division or divisions

with which they were connected and try to set up a divisional seminar, which would be available only to divisional concentrators.

BC: Was there ever an effort to divide the class into those who were interested in practice and those who were interested in a more academic track? Was that too radical?

LL: Every now and then some people would move in that direction. Generally they were people who thought of an academic track as the super elite in which you wouldn't pretend that you were preparing the student for practice. Bruce Ackerman was a partisan of that, occasionally some others. Never came to much.

The divisional program floundered, in effect on perceptions by the faculty that the time and blood they devoted to the divisional program was not going to be adequately compensated in any way. So Harry Wellington and Clyde Summers and Ralph Winter would work hard on labor law, but Wellington was also in contracts, but they didn't seem to be getting any dividends out of working hard on labor law. The people who would be made the convener of the division, faculty – over the years division had other names like cluster or whatever – but the people who had been made convener would have the duty of twisting the arms of others to make sure that something was covered and to see whether they would team teach or in some way join in the collective collaborative parts of the divisional enterprise.

BC: Sounds complicated. The small group concept was older?

LL: It's a couple of years older.

BC: Did that evolve? Was there a long evolution to it, or how did it come about?

LL: Money. Ford money, I think.

BC: The size of the first year class, was that an ongoing issue?

LL: Yes. Yes, some people thought that the traditional benefits of the Yale Law School were being lost because the classes were growing too large.

BC: When was that?

LL: Always. Some said, “Well, let’s have at least one course in which the entering student is in a small group, is well-known by one member of the faculty, not necessarily a junior member, whoever is in order in the rotation. So that the student doesn’t feel lost and anonymous and neglected. There’s somebody who knows that student and whatever their strengths and weaknesses are. That was the impetus behind the small group, but of course that has an impact on the size of the faculty and the student body. How many small groups can you have? How many students for each small group? How much of a faculty do you need in order to staff such a system?”

Then there would be argument every year. I told you about the Pollak comment?

BC: I don’t think you did.

LL: When Jack Tate reported on the size of that first-year class?

BC: Tell me again.

LL: Where do my pearls go? Jack Tate was in charge of admissions. He reported near the beginning of the term that the first-year class was a little larger than we had planned for. He knew the faculty had laid down the law the year before that there had to be positive stops at every stage of the process, to keep the enrollment from swelling. They had done their best, but there was a draft deferment that had gone wrong in one place, there was a marital hardship in another case, there was an illness in a third case, and what with one thing and another, the numbers crept up. Where the faculty had insisted on whatever, let’s say 160, the actual enrollment matriculated in September was 164. There was a little discussion, quite brief. Nobody was going to take it very seriously. Grant Gilmore, burlesquing himself (and it wasn’t easy to tell when he was burlesquing himself) said, “I move that Dean Tate be censured,” and there was a little chuckle through which the thin voice of Louis Pollak said, “Um, couldn’t last year’s censure be carried over?” I hadn’t told you that?

BC: You did privately. [Laughter]

UL: It's all right. It was in a faculty meeting. Now cut and I'll tell you something else. [tape turned off]

BC: The Vietnam War era. Let's go there.

UL: Two bubbling caldrons of unrest came to a boil at the same time in 1969-1970 for Yale. In describing this, I have to concede at once that Yale didn't have it anywhere near as difficult as law schools in big cities or for different reasons, Cornell. It didn't have the troubles of Columbia or Berkley or later Harvard. The two caldrons were black students and Vietnam.

In 1968-1969, the first one to simmer was black students. There was a kind of treaty about how many black students there should or needed to be between the representative of black students and the deanship, that's Pollak. Nobody was quite happy with it. In the summer of 1969 a series of errors were made a la Jack Tate, though I don't think it was Jack. The Law School over accepted in general because they feared that the war would lead to attrition of the accepted students. They also miscalculated the take rate, that is how many of the students who were accepted would come. In particular, they made too little distinction between whites and blacks. As a result of these and some smaller errors, in the fall of 1969 in Law School, having prepared for a student body first-year class of about 170, of whom seventeen or so would be black, found itself with a student body of – I've forgotten now but it's something over 200 – of whom thirty-three or thirty-two were black. These were the times when you had this degrading discussion: "Is Miss Sills really white or is she black?"

In the fall of 1969 the black law students here began making non-negotiable demands on Pollak for one thing and another: for office space, for bulletin notice space, for this or that privilege.

BC: Was there a Wall then?

UL: It was growing then, yes. The faculty – I speak in this distancing way because I wasn't here in 1968-1969. I was at Stanford. I was back in 1969-70. In 1968-1969 the school had set up kind of remedial special

classes for marginal black students who were admitted because of the snafu that I described before. Some faculty members volunteered to teach these, Marvin Chirelstein, I guess maybe Boris, but of course the militant blacks spat on it. They don't need special favors. They can handle it perfectly well without it. If they can't, it's because the tests are bad.

This merged with a university-wide scandal about university police harassing black students on the Old Campus. At one point the black law students organized a snake line that snaked through various classes on the first floor of the Law School disrupting things. Not much, but disrupting. Clearly a disruption. Plus daring the university to do something about that. What of the snake line? What were they manifesting? They were demonstrating about the police brutality, and why is it the black students are always hassled when whites are not? Why are the odds so much worse for blacks?

BC: The snake lines were just law students?

LL: I think so. I think so. [end of side 2, tape 1]

LL: The Law School administration urged the leadership of the Black Law Student Union to meet with as many law faculty as could make it and as many students as wanted to make it, to talk about ways in which the Law School might be helpful on questions of protection of black students from harassment on the campus and other things. The meeting was in the Faculty Lounge and when we got there, we – I mean there may have been ten faculty members and maybe thirty black students – we found the black students had arranged the chairs as if they were the gunnels of a ship, long narrow curving ovals with back rows and back rows.

Pollak started to lay out the agenda and the situation and how we might be helpful. He was rudely cut off by Otis Cochran who was the head of the Black Law Students Union, who with much profanity, obscenity, told him in effect he had no business trying to run the meeting at all and, in effect, the school was beyond redemption. This went on a little while, after which Gene Rostow got up and left, saying, "I will not stay at a meeting where my dean is treated this way by our students." The black

students jeered at him as a coward and not willing to face the music, and in about five or ten minutes there was just nothing more to be said, and they chose to break it up and left.

The only people in the faculty who were sticking it out by that time were Pollak, Brown, Bittker, Lipson, maybe one or two others. I thought to myself, "It's too bad the students can't look upon this with any rationality, because what they would have seen was a group of concerned white liberals trying to do something constructive and helpful with no abuse, no racism." Of course, the right kind of black looked at that and said, "This is just what we've been oppressed by for 200 years, by the patronizing liberals."

BC: What were the specific concerns on the part of the students?

LL: Amnesty for the people who had led the snake drive, the disruption of classes for one thing. Investigation of the police for harassing black students on the campus.

BC: So, actually, there were no specific Law School issues.

LL: Well, the disruption of classes was a Law School issue. It happened in the Law School.

BC: Right, but the reason for the disruption of the classes was ...

LL: It's a combination. Now, it wasn't until a couple of days later that I realized, and to my astonishment none of my colleagues had realized it, although they followed these world newspapers much more closely than I do, what was behind this or at least the main thing behind this. The Black Law Students Union was to be the first host of a national convention of the Black Law Students Association, and they wanted a stink and a grievance and banner.

BC: That's interesting. Now how did Pollak take it? Did he seem wounded by all of this?

LL: Sure. Sure, but he knew there was work that had to be done. He had already taken a good deal of guff out in the world you might say, in his world that is, from militant blacks. Pollak had been very helpful to blacks in the NAACP Legal Defense Fund and so had Charles Black,

they had both worked on *Brown v. Board of Education*, and so of course they were stomped on. So this was not what you might call new to him. He faced the breakdown of the Civil Rights Coalition of the early 1960s before then.

BC: How was the relationship between the Law School and the Brewster administration at that point?

LL: Quite cordial, I think. Now, this was in the fall. I'm pretty sure it was in the fall because in the spring there was another peak, a higher peak of anger and outrage. That was a combination of outrage on behalf of blacks and outrage against the Vietnam War. It was a time when there were strikes and mass meetings. It was the time of the Bobby Seale trial.

There was one big meeting of the student body and faculty in the auditorium where the question was, should the faculty support a strike or not. Some said yes, some said no. Pollak tried to slow things down with a slow-paced account of meeting Professor Lipson that morning, asking him where he was going. Professor Lipson said, "Why to the Law School to teach. It's my work." I don't think it converted many troops. Ralph Brown, who often has good ideas but had them too soon and too superficially and won't go beyond them, got up and said, "Oh, why not a short strike? So you're not in classes for two or three weeks, everybody knows that any decent law student can pass a Law School examination by cramming for it in a couple of days toward the end of his first year." Bittker was the Old Left that I mentioned before, saying to the students, "Have a look at yourselves. What are you doing? You're afraid of your constituency. You're not putting yourself at the head of your troops. You're barricading yourselves behind the National Guard and residential colleges and the university police. Why aren't you out there on the Hill and on Dixwell or at least learning what grievances are?"

BC: Could you tell how the students took that?

LL: Well, I'm not sure. I think they thought, "Well, Bittker's a decent fellow but he's way behind it." At one meeting – I don't think it was that meeting – I think it was a different meeting. There was a fiery student

orator who later became well-known as a demagogue, Duncan Kennedy, with his loose-lipped grin recommending in effect comic insurrection.

It was around this time also that you had the indignation meeting in the university as a whole, at which after a lot of procedural wrangling about what was being voted on and who should vote and when, an actual tally was made of voting some issue or other, and the chair was Bob Dahl, and he went through the little chits submitted to them by the tellers and said, “You aren’t going to believe this, but the total is 1386 to 1386.”

BC: Is that right?

LL: Yes. He had other people check it. So people kind of tended to laugh at it. There was another meeting – that one I hadn’t attended, this one I did – which was called by the Black Panthers and the SDS and held in the Ingalls Rink. It had been set up so that there was a platform or dais in the middle, maybe as big around as this living room, but full. There were people all over the place, on seats and on the floor. I had a bad leg and I clambered up slowly to a quite high central place from which I had a good view and watched what was going on at this meeting, which I think you will have to enjoy. [tape turned off]

You see, this was just about the time of the Bobby Seale trial and the Kent State shooting. The meeting was organized by a combination of anti-Vietnamers, mostly white, and black militants. At the start there was something like an invocation offered by Bill Coffin – you know who he was? – with the hope of nonviolence.

BC: Was this May 1970?

LL: I think so. The black militants sat on their hands; the whites applauded. Then a Black Panther took the microphone and said, “From now on this platform belongs to the people.” Wild applause from the black militants, but most of the whites sat on their hands. Talk from various people about what a lousy society this was that would send people off to war against a weaker, distant country. The same society that oppressed its black brothers in this country.

Then some whites got the floor, got the mike to read a telegram that had been sent to Vice President Agnew from Bill Horwich, who was then an alumni member of the Yale Corporation in which Bill scored some debating points against Agnew who had said something or other about Yale. The white students were wildly enthusiastic that Agnew had got his comeuppance through a Yale trustee, but I could see the Black Panthers thinking to themselves, “Christ sake, what are we wasting our time on? Here we’ve gone to all this trouble to build a coalition because we thought we could get people more or less of like mind, and what do we get? We get a student body going ape over a white Jewish banker. What the hell?”

The main speaker of the evening was and was to be – oh, dear what was his name? David Hilliard, who was I think chief of staff of the Black Panthers National. Someone told me later that because the Panthers had had such terrible luck with their leadership, with Seale under arrest for murder and Huey Newton under arrest for something else, Eldridge Cleaver in trouble for something else, Hilliard had been advanced too fast and was not up to the responsibilities that he had. He began talking and he worked himself up, and the more he worked himself up, the more he alienated the white students, and he got around to saying things like “Off the pigs.” Off is a variation of “kill.” The Yale kids, they wanted to be onto something else. So you could tell the hostility and so could Hilliard.

He said, “What the hell, we’re laying our lives on the line every day and you kids are toying with a revolution.” But nothing much came of it and then something happened that transfixed the audience. The microphone was taken by a young white man who began to talk. Who was he? How did he get to the microphone? What business did he have there? Nobody could tell. The Black Panthers had been parading around the edge of the dais with bandoleers and berets and were terribly embarrassed that they had allowed this stranger to get certainly within stabbing distance of David Hilliard or anybody else and to get to the microphone.

In the hubbub, they hit the young man and drove him off the platform, and he crawled along a kind of corridor out toward the periphery of the seats being kicked and stomped as he did so. But thanks to my position I could tell that the kicking and stomping, which was Black Panther, was very largely demonstrative. They didn't mean to maim him. They didn't mean to kill him. They wanted to be shown as vigilant, especially given that they had fouled it up.

BC: Do we know who he was?

UL: Yes. He turned out to be a mentally deranged Greek graduate student with a Turkish name. After a long time the confusion was resolved into the idea that he should be allowed to speak, and there was something like silence, quiet, and there he was with the mike. He stood there for fifteen, twenty, thirty seconds, which is a long time in that charged atmosphere, and began to weep. Then from another side of the hall came Ken Keniston, the psychologist, who said, "This man needs help," and walked towards him and drew him away.

BC: My goodness. I've never heard that story.

UL: So that was the end of that episode and it was the end of the trajectory of the evening. Who was going to do what? Here was this poor soul. Nobody knew what side he was on. He probably didn't. Here was the Bill Horwich, the hero of one part of the evening. David Hilliard had just flubbed the ball. Nobody was getting anything done.

BC: That story is interesting because it forces you to think of what could have been with a more articulate, flamboyant speaker.

UL: Oh yes. Sure. [tape turned off] The discussions about the Vietnam War were partly formal, partly informal. There were a good many symposia or meetings. One of the difficulties was the legal procedural difficulty. Is it what a law school is for, a law school faculty is for? To take positions on a contested matter like national policy, like the Vietnam War. Here was Pollak, bitterly opposed to the Vietnam War, but owing allegiance to the ethos of procedural nicety. Against him, among others, was Bob Cover, bitterly opposed to the Vietnam War, a proceduralist himself but

perhaps not as subtle as Pollak. He wanted to break through the fictions of procedural scruple.

Over on one side was Alex Bickel. Bickel had been opposed to the Vietnam War, partly because Rostow was for it, but now Bickel was turning Republican. He had more than a glimpse of the next associate justice of the Supreme Court when he looked in the mirror. So there were cross currents. Rostow was much execrated by students opposed to the war. One small group student of mine told me in private, “Dean Rostow ought to be shot,” and he meant it that day, that month. Passions were high.

BC: Was there feeling about Brewster’s flexibility in regard to anti-war demonstrations in New Haven? Were there people who took both sides of that?

LL: I don’t think so. I don’t think so. The only thing that stays in my memory from that time in this regard is Brewster’s skeptical statement about a black revolutionary.

BC: Yes, being able to get a fair trial. Maybe we can talk a little about critical legal studies and its effect on the Law School.

LL: What’s more interesting is that it didn’t have much of an effect. As it developed, it turned out that Yale people or former Yale people had a good deal to do with it, but there was never for years anyone at the Law School who would acknowledge himself as a follower of or adept in, an adherent of, critical legal studies. The Yale people who might be associated with that label would have included Rick Abel, who went from Yale to UCLA. David Trubek, who went from Yale to Wisconsin. Maybe to some extent Tom Heller, who I think went from Yale to Stanford. Duncan Kennedy, who went from Yale to Harvard. Maybe Rick Simon – Larry Simon, who went from Yale to University of Southern California. But the main theoreticians by the time they did their work were not at Yale, if they ever had been, like Roberto Unger, never at Yale or Trubek or Heller.

Critical legal studies could be regarded as a super trump where normative analytical jurisprudence is trumped by legal realism, which is super trumped by critical legal studies. On the destructive side or the negative side, critical legal studies took the view that no positive normative law could be defended beyond a few superficial moves of argumentation. Beyond that it certainly broke down. That critical legal studies – I’m sorry – that ordinary mainstream legal thought pretended to objectivity, neutrality, impartiality, but in fact was playing the game of privilege.

BC: Is there a parallel between the skepticism of critical legal studies and the new left? Is it sort of a legal realism-critical legal studies and old left-new left parallel?

LL: Well a bit, but that picture is made more complex by Derrida and deconstruction. As I see it, although I’m not really intimately familiar with CLS people’s thinking, but as I see it there are some like Duncan for whom the negative side of CLS is quite sufficient for these days. There’s enough junk around to be swept away by CLS. It doesn’t matter what replaces it. Can’t be worse. Let’s move toward equality. So let’s give every janitor in the law firm an equal vote with the founding partner or the same in the Law School. Let’s foster the revolution by requiring the system to live up to its professed ideals, and if you can’t do that, jeer at the system for not living up to them.

BC: I would think that is a frustrating ideology for a legal realist, a pragmatist.

LL: Oh, yes. Yes, and what happened at Yale was, leaving aside for the moment the question of law and history and law and philosophy, that a lot of people took refuge in law and economics. You can find more certainty there or you can find an elegant way to couch your uncertainty. You can work up some possible hypotheses and conclusions, satisfying the arguments. You have to work hard to understand the notation and the techniques if you’re going to work at it the way a mathematical economist would or even a macro economist.

BC: And you can conclude things more concretely.

LL: More what?

BC: Concretely.

LL: Yes, and it seems to then point to something more constructive.

BC: We should stop here. I've kept you a long time. Thank you so much. It's been a terrific conversation.

