

University of San Diego

Digital USD

---

Conversations in Legal Education

Legal Research Center Archives

---

12-16-2004

## Conversations in Legal Education: Carl A. Auerbach, December 16, 2004

Carl A. Auerbach

*University of San Diego School of Law*

Follow this and additional works at: [https://digital.sandiego.edu/law\\_oral\\_histories](https://digital.sandiego.edu/law_oral_histories)



Part of the [Law Commons](#)

---

### Digital USD Citation

Auerbach, Carl A., "Conversations in Legal Education: Carl A. Auerbach, December 16, 2004" (2004).  
*Conversations in Legal Education*. 4.

[https://digital.sandiego.edu/law\\_oral\\_histories/4](https://digital.sandiego.edu/law_oral_histories/4)

This Oral History is brought to you for free and open access by the Legal Research Center Archives at Digital USD. It has been accepted for inclusion in Conversations in Legal Education by an authorized administrator of Digital USD. For more information, please contact [digital@sandiego.edu](mailto:digital@sandiego.edu).

## CONVERSATIONS IN LEGAL EDUCATION:

ORAL HISTORIES OF THE FIRST HALF-CENTURY OF THE UNIVERSITY OF SAN DIEGO SCHOOL OF LAW

---

Narrator: Professor Carl Auerbach

Interviewer: Dean Daniel Rodriguez

Recorder: Ruth Levor

Date: December 16, 2004

Accession No.: OH-LRC-Auerbach-2004-5

TAPE 5: SIDE A

### ***REDACTED BY THE NARRATOR***

RL: This is an interview of Professor Carl Auerbach for the project: Conversations in Legal Education: Oral Histories of the First Half-Century of the University of San Diego School of Law. The interview is being conducted by Dean Daniel Rodriguez at the University of San Diego School of Law Legal Research Center on December 16, 2004. This is the fifth session of this set of interviews. Tapes and transcripts of this interview will be archived at the University of San Diego's Copley Library.

DR: Good morning, Carl.

CA: Good morning, Dan.

DR: Let me begin with the end of your distinguished tenure as a member of the faculty at the University of Wisconsin, and I note that you had what by all accounts was a happy year at the Center for the Advanced Study in the Social and Behavioral Sciences at Stanford in 1958 and 1959. I wonder if you'd reflect on that year, what that year meant to you at Stanford.

CA: That was an amazing experience. I was supposed to go to the Center the year before. The cENTER never had a lawyer as a member of the group. the president of the University of Wisconsin asked me to get a postponement, because The was picking a law dean, and would like to have my input. So I postponed going out to the Center for a year, and during that year he never

talked to me once about [laughter] whom I would prefer to have as dean, and of course, the person chosen was anathema to me [laughter] at that time.

Be that as it may, I decided to devote the year to the study of sociology. It's interesting that all of the efforts in the AALS to promote interdisciplinary studies were based on collaboration with the political scientists, mainly represented by Vic Rosenblum, who was then a professor of political science at Northwestern, not associated with the law school yet, and at the same time, there was this current going on within sociology to study the legal order, which was spearheaded by Richard Schwartz, Red Schwartz. You may remember him. He later was the first, probably the first and only, person from another discipline who was ever made dean of an American law school, even though he didn't have a law degree. He became dean at Buffalo, you may remember. Harry Ball, who was then working for Willard Hurst at Wisconsin and later became a professor of sociology at Hawaii, where I believe he may still be. And they founded the Law and Society section of the American Sociological Association. Just when we gave up on our efforts to promote interdisciplinary activities in the Association of American Law Schools, the Law and Society Association was founded formally about October 1966. Bob Yeagey, who was then a practicing lawyer and an adjunct professor at the University of Denver, later Dean at Denver, was a leading spirit with Ball and Red Schwartz.

DR: Can I just ask you about the connection between that movement of Law and Sociology and the University of Wisconsin. The reason I raise that question is I note that Wisconsin was known, certainly in the '70s and the '80s for quite a lot of work. I think of Stuart McCauley, he's a member of the faculty, and perhaps others.

CA: Right.

DR: What was the connection between Wisconsin and the emergence of interest in sociology?

CA: Well, Harry Ball, who really is the true founder, was a fellow at Wisconsin when he thought up this idea, working mainly with Willard Hurst, and McCauley's work was a continuation of what Willard and I had done in the legal process materials. He got the idea for

his seminal work from the materials in our legal process book. McCauley then became very active in the Law and Society Association.

DR: Mm-hmm, mm-hmm.

CA: But it's interesting how interdisciplinary efforts shifted from one discipline to another. So, based on my Wisconsin experience, I was very eager to study sociology at the Center, and I couldn't have done better, because next to my office on one side was Ed Shils, who was, of course, a leading American expert on Max Weber, and I read Max Weber in the original German, Ed Shils translated for me when I needed a translation. And then, on the other side was Danny Bell, who was very much interested in the same kind of things.

DR: Although I take it that Professor Bell didn't convert you to neo-conservatism.

CA: Oh, no, he's never been a neo-conservative.

DR: Oh, okay.

CA: Danny has been a true dissenter from the very beginning, and actually, he ceased his associations with the Public Interest magazine when ... Oh, God almighty, the leading ...

DR: Horowitz or ...

CA: No, no, his son now head of, publishes the Standard, Kristol ...

DR: Kristol ...

CA: It was Irving Kristol. He and Danny Bell started the Public Interest magazine, and when Irving Kristol switched it towards a neo-conservative view, Danny quit.

DR: Mm-hmm.

CA: He's a dissenter to this day. He started writing for Dissent [laughter]. So Danny on one side and Ed Shils on the other, really were giving me a graduate education in sociology. It's interesting that nobody thought of economics as having much potential for law at that time.

DR: Hm, that is interesting.

CA: Yeah.

DR: How about, speaking of the social sciences, how about such fields as anthropology? Was that ...?

CA: The year I was at the Center was the year of the anthropologist.

DR: Mm-hmm.

CA: I just got a letter from the Center, a very discouraging letter, listing all of the fellows of my year who are still alive [laughter]. There aren't very many of them, and one of them was an anthropologist who's supposed to be at UCSD, Melford Spiro.

DR: I've heard the name.

CA: So I've been trying to reach him without success so far. I don't know where he is.

DR: Well, your year was in between your move from Wisconsin to Minnesota, and I'd like to ask you to reflect on what occasioned that move, and what do you remember from your early time at Minnesota?

CA: Oh, what occasioned that move was the frustrations and disillusionment of the 1960 campaign in Wisconsin between Humphrey and Kennedy. I sort of had it with Wisconsin [laughter] after Kennedy defeated Humphrey in that election. That was a contributing factor. The idea of going to Minnesota and being even closer to Humphrey appealed to me greatly.

DR: Did he play a role in your move in the sense, did he communicate with you about it?

CA: No, I told him after the event that I was coming to Minnesota. And then, of course, there was the deanship issue that I told you about. Nate Feinsinger was scheduled to be dean, and if he or Jake Beuscher had been chosen, I doubt very much that I would have left Wisconsin, but neither of them was chosen. The president of the University went to Washington and spoke at a dinner honoring Nate Feinsinger's return to academic life. Nate headed the Wage Stabilization Board in Washington and came to grief over the steel seizure case. Industry opposed him bitterly, and the Wisconsin president backed down at the last minute and chose George Young, who was a Republican, on the ground that he was close to the governor of Wisconsin, who was then a Republican. That would be a great boon to the law school. It turned out that this Republican governor was defeated months after the choice was made. Gaylord Nelson, a good Democrat, was chosen to be the new governor, and he detested George Young [laughter]. So much for political motivations. Those two were the main things that led me to leave.

DR: Who was the dean at the University of Minnesota when you arrived?

CA: Bill Lockhart.

DR: I wonder if you could comment on some of your memories of your colleagues in your early years at the University of Minnesota.

CA: Bill Lockhart also had a fellowship at Harvard when I was a first-year student, and he showed me how to use the library. That was one of his jobs, so it was a very interesting thing that we met this way.

There wasn't very much activity in Minnesota then of a scholarly nature of the kind that appealed to me greatly, and I was very flattered when, after a while, I was referred to as the Willard Hurst of Minnesota. I couldn't have wished for a better [laughter] comparison, because I've always thought, as you know, that Willard was *the* greatest scholar of my generation. So there weren't very many people that I could really work with, other than Bill Lockhart himself. Yale Kamisar and Jesse Choper were just beginning their careers at Minnesota, and Bill wanted join him, Yale, and Chase in editing a casebook on con law, and I agreed. West announced that I had joined the project, but after a while, I decided to sever the relationship. Yale and Jesse were in a hurry to get their names on a casebook, so their chances of leaving might be greater [laughter]. I thought that was the wrong motivation, and when it became apparent to me that it was going to be a rush job for that reason, I backed out of the project.

DR: May I ask you just, on that point, other than the materials with Samuel Mermin that we spoke about previously on the legal process, if I'm remembering accurately, you never did participate in a casebook during your career or wrote a casebook. Is that accurate?

CA: No, I did a book on public utility regulation with Nat Nathanson ...

DR: Okay.

CA: ... in 1954.

DR: Let me ask you this then. Did you ever consider putting together yourself, or in collaboration with others, a major casebook in constitutional law or administrative law?

CA: No, I was always against the idea of casebooks.

DR: Why?

CA: Because I thought it was a diversion from real scholarship, an excuse for not doing real scholarship [laughter], and so the only casebook enterprises I ever went into were those in which there was nothing available in an area I wanted to teach in. There was nothing like THE LEGAL PROCESS, and there was nothing like our public utility regulation casebook, which, as you may know, talking about fiascos, turned out to be the biggest money-loser on the West list [laughter].

DR: I certainly will eventually turn to your time as dean at Minnesota, but before I get there, I want to ask you about the period of the late 1960s when you served on two very different committees or commissions, one on marine science engineering and resources and the other on highway safety. How did you come to those roles?

CA: Through Humphrey. He asked me. The main thing was the Marine Sciences Commission. Humphrey asked me to sort of represent him on the Commission, and I was in charge of all the international sea problems for the Commission.

DR: Had that been an interest of yours prior to being asked to join?

CA: No, I told Humphrey when he asked me to do it that I knew nothing about the subject matter, and he'd better find somebody else, and he said no, he wanted me to do it. I had some basic ideas from administrative law about the work of the highway safety committee. The only thing I ever accomplished in two years, was to get the committee to experiment with administrative handling of traffic fines [laughter]. I always thought that that's the way it should be done, not in a judicial process. We succeeded in New York, maybe the state of Washington and a few other states which have adopted administrative adjudication, of traffic fines.

DR: Let me ask you a question about highway safety. It's a bit of a tangent, but I'm interested in your reactions to it. A number of years ago, Professor Jerry Mashaw of the Yale Law School wrote a book reflecting on the experience of automobile safety regulation, beginning, of course, with the enactment of the Motor Vehicle Safety Act of 1966, and one of his conclusions was that the agency, the National Traffic Highway Safety agency, really made a very unfortunate detour

away from the use of rulemaking to enact rules and regulations governing highway safety toward a judicial model that relied on recalls, and that the experience of automobile safety for really that twenty or twenty-five years after the creation of this new regulatory model was hard to reconcile with the 1960s, '70s model of more command and control regulation. What's your feeling about it?

CA: I think there's a point, although I think that the recall alternative was regarded as more efficient, that you could accomplish more through the recall alternative than through issuing rules and regulations you then have to enforce. So it wasn't solely that they were enamored with the adjudicatory model particularly, but that they thought this was the best way to accomplish safety. The Safety Commission, at that time, had a lot of excellent people representing the insurance industry that were very eager for highway safety for self-interest reasons, but they were the principle interest groups behind tougher measures, and I think they were quite receptive to the recall alternative. By the way, I succeeded Jeff O'Connell on the Safety Commission.

DR: The great torts scholar at the University of Virginia.

CA: Yeah.

DR: Well, let me take you back to the oceans for a moment and ask you what was the final product of the Marine Science Commission that you were on, and also while I'm at it, ask you, with so much attention now from the Pew Commission and others being related to the problem of dealings with environmental protection and the oceans, what do you think about your experience in the 1960s now, given the modern situation?

CA: In terms of the international structure, the real question was who was going to control the oil on the continental shelf. I had worked up--it was virgin territory, nothing had ever been done about these matters at that time--a system which the Commission as a whole adopted and recommended to the President that we have a very narrow continental shelf. We were concerned about other nations. If we came up for a long continental shelf, other nations would adopt it and

that would not be in the interests of the United States, either economically, because of the fisheries question or from the point of view of national security, so we came out for a provision that the oil industry opposed bitterly. In fact, the oil industry attacked me in their journals as selling out America's heritage, and when Nixon beat Humphrey, the oil industry indicated that it could forget about all of these recommendations now [laughter]. They weren't quite correct, because Nixon went a long way toward adopting our proposals with regard to the international sea. To this day, we've refused pretty much to join the international structure, and I think in some ways, I sympathize with that, because I thought there ought to be essentially a first-come-first-served system, but out of the exploitation, there should be a sort of royalty payment for international aid, which would be controlled by the U.N. Instead the U.N. got, I think, sidetracked into requiring that nobody exploit the resources of the ocean without yielding the technology to the under-developed nations so they could go and compete. That's never paid off to this day.

DR: And now, we're at a legislative impasse, both domestically and internationally.

CA: Right, right, so that didn't work out, but the real hero was a member of our Commission, who was the chair of our international section, although I did the legal and other work on that, Jacob Blaustein, who was then the head of Amoco. He owned Amoco. His father originated the service station idea with a horse and wagon and gasoline in a big keg. He would drive his horse and wagon and stop off in various places and sell gasoline. Out of this came the Amoco chain. Well, Blaustein went along with the proposals that I had developed, and he persuaded a good section of the industry but not a majority. He never got a majority vote on the National Petroleum Council, for example, but he stood up for these recommendations to the very end.

DR: Well, let me bring you back to Minnesota and ask you what led to your consideration, on your part and ultimately your selection, as the dean in 1972 of the law school.

CA: Well, I never wanted to be dean at Minnesota or anyplace else, and Willard kept me from accepting some other offers before that.

DR: Willard Wirtz?

CA: Willard Hurst, yes.

DR: Oh, Hurst, I'm sorry.

CA: Willard Hurst. We were in really a wretched situation, we had indescribably poor facilities at that time, and there was no way to attract faculty. We had no offices. Our Rare Book Room was underground and a magnificent collection was rotting. It was clear that a new building was essential before the law school would get any place, and Bill Lockhart tried very very hard to bring that about but didn't succeed. I tried very hard to persuade other people to be interested in being dean. Roger Cramton came closest. I enlisted Walter Gellhorn to try and persuade him to come, and then I tried actually to get Dick Speidel to become interested. I found that everybody said that I would have the maximum political clout to get a new law building, which was true, because we had a Democratic governor, Wendell Anderson, and Humphrey and Mondale were the senators. We also had a Democratic legislature. So, very reluctantly, I accepted the deanship, mainly to agitate for the building, which I did, and spent every ounce of the political capital [laughter] I ever had in the effort. For example, I would meet with Humphrey and Mondale, and they would ask me who were the doubtful people in the legislature on the building issue, and they would then go inside the halls of the legislature and talk to them, you know, one-on-one. With all this political clout, we got through the Senate by one vote, you know.

DR: What were the objections?

CA: I never never understood it. I never understood why the objections. There was one individual, Jack Davies, a powerful senator, who was on the Senate's Judiciary Committee and Appropriations Committee and a professor of law at William Mitchell, who was our principal opponent. Our University Vice President, Harold Chase, accused him of self-interest in opposing the building. We had to defeat the chairman of the Judiciary Committee in the Judiciary

Committee and the chairman of the Appropriations Committee in the Appropriations Committee. What did it was my late wife, Laura, who was the principal speechwriter for the governor, I forgot to mention that [laughter]. Throughout the whole struggle for the building, my office was the governor's office, and all the staff people of the governor told me what was going on. We got no support from the university. It was just unbelievable.

DR: That's surprising. Why not support from the university, since they obviously would benefit?

CA: Because the president's vice-president, who was in charge of relations with the legislature, told him it was a lost cause and that he ought not to waste his political capital on the law school, that the legislators would never vote for a new law building. In fact, late one evening, when they were debating the building, Linda and Rick (my daughter and son) were with me, and I took them to the galleries to listen to the debate. One of the Republican senators pointed up at me in the gallery and said, "There's Dean Auerbach up there, and he wants a new building for new lawyers. I'll tell him where all the lawyers are—in Stillwater," which is the state prison [laughter]. That was the attitude. Some of it was anti-lawyer, against the legal profession, and it was very difficult to know why. And then, there was a former Republican governor, absolutely wonderful, Elmer Anderson, who was head of the Board of Regents, and he was a staunch supporter. We never would have gotten the building without him. He told me that we had to show that we had some kind of constituency, so I should go out and raise a million dollars, the estimated cost was eleven million for the whole damn building.

DR: And you expected to raise the million dollars first before the legislature ...

CA: Yeah, he thought that, in doing that, we'd be fine, so I said fine, and I got two lawyers, one was a graduate of our law school, and the other, Peter Dorsey, was a Harvard Law graduate, to raise the money with absolutely no administrative costs. They bore all the administrative expenses personally, and we raised the money without much difficulty.

DR: I'm curious, was the Dorsey the same name as in the Dorsey and Whitney law firm?

CA: Right, he was Peter Dorsey. He was a senior partner. By the way, he has a house in La Jolla now.

DR: I'll have to speak to him for money.

CA: [laughter] And he was wonderful.

DR: While you were devoting so much energy to the building, what was the faculty doing at the time? I take it they were supportive of your efforts.

CA: They were waiting for me to tell them what was going on, and I would sort of give them a battle message every day as to what was going on, you know. Things were pretty much at a stopping point during that whole fight, which lasted from '72 to about '74.

## CONVERSATIONS IN LEGAL EDUCATION:

ORAL HISTORIES OF THE FIRST HALF-CENTURY OF THE UNIVERSITY OF SAN DIEGO SCHOOL OF LAW

---

Narrator: Professor Carl Auerbach

Interviewer: Dean Daniel Rodriguez

Recorder: Ruth Levor

Date: December 16, 2004

Accession No.: OH-LRC-Auerbach-2004-5

TAPE 5: SIDE B

CA: After the building was finished, it won all kinds of architectural awards, and the principle opponent of the building said publicly on the floor of the legislature that this was the biggest bang for a buck the state had ever gotten [laughter].

DR: A lot of chutzpah!

CA: Yes, yes.

DR: Well, we were speaking about what the faculty was doing. It sounds like they were waiting with bated breath for the solution, but certainly, other things were going on during the period of time.

CA: Yes.

DR: Were new faculty hired, or what was [unintelligible]?

CA: Oh, yes, oh, yes, we were hiring new faculty, and I was beginning to turn inward, you see, and once we got the appropriation, there was nothing which I could do other than watch it go up, and we were fortunate to have the building in a different location, so there was no disruption. We continued in the old building until the new one was absolutely ready.

I was beginning to turn inward, mainly for curriculum reform. The difficulty essentially was, and this again was something I don't understand to this day, that after this long and grueling battle, the university administration refused to give us the means to increase the faculty and student body to the levels that we had pointed out to the legislature we needed to reach in order to use the new building. They just refused, and they denied that they had made a commitment to do so. This caused me to resign.

DR: Why do you believe they refused to honor their commitment?

CA: I honestly don't know to this day. I just cannot figure it out. At this time, there was still, and maybe I was naïve about that, there was still a tradition of getting what the law school basically needed from the legislature. What you raised privately was sort of, you know, a very good increment but not necessary to satisfy basic needs. I probably did not give sufficient attention to the potentiality for private funding, see. What I was fighting over I might have gotten from private funds. Now, of course, some members of the profession told me, "You know, if you start raising private money for basic needs, there's no end." You know, this is in a limited demand from their point of view. If the legislature begins to know that the legal profession and friends of the law school are going to meet any basic deficits, why should they appropriate the necessary money? And this is what worried me also, that then we would come out with no net gain. Well, I think I was wrong about that, because Bob Stein, who was my successor, raised twenty million dollars, and then Sullivan, who finally put the building together that I originally wanted for that proper size, raised forty million dollars, you know, under Fritz Mondale, so I may have been completely mistaken about that, but I don't know what the level of public expenditures for the law school has been in the last ten years, twenty years.

DR: There's certainly a perception among those who track the progress of the leading public law schools in states like California, Virginia, Michigan, Minnesota, that the proportion of money that comes through legislative expenditures has declined significantly over the last twenty or twenty-five years.

CA: That would be my impression.

DR: Just ...

CA: But it hasn't discouraged the profession, you see, that's the interesting thing. I thought it would, and I was probably wrong about that.

DR: The profession in terms of fundraising?

CA: Yes, the fund of contributions, yes.

DR: Well, you left the deanship under the circumstances you described, but you remained on the faculty. I'm curious how that was, to be a former dean on the faculty.

CA: Well [laughter], ...

DR: I have some selfish interest to ask that question.

CA: Yes, I'm sorry that I can detect the self-interest in that question [laughter], very sorry. Well, one thing I did that Bob Stein can attest to was never to look over his shoulder, and I never offered any suggestions. I never talked to him about anything. Bob Stein was my successor as dean, and I was delighted that he was, because he was my associate dean. I would, of course, if Bob wanted to talk to me, I was quite willing to talk to him and give him the benefits of my views, such as they were, but I offered absolutely no suggestions or proposals or anything. I just voted as a faculty member, and that's all [laughter].

DR: But certainly you returned to your academic work.

CA: Oh, yes.

DR: What were you working on? What were the projects that you were able to return to in earnest while in your deanship and through the 1980s?

CA: I went back, and of course, this is what I did at the Hoover, the year I spent at the Hoover. I had a sabbatical ...

DR: 1983 to '84.

CA: No, it was '79-'80.

DR: Oh, I'm sorry, yes.

CA: You know, when I quit the deanship in '79, I resigned the deanship, and I went to the Hoover, mainly to work with Marty Lipset, I had written to Marty, who had just published a book on the political positions of faculty, which was based on the Carnegie study of graduate students and university faculty members, done by the ex-president of the university, a famous president of the University of California.

DR: Gardener, was it Gardener?

CA: No, no, before Gardener. Oh, my ... big bald head?

DR: Clark Kerr.

CA: Clark Kerr, yes, Clark Kerr, with whom I went on a number of tours of the University of California while I was at the Center. Well, he did this amazing study. There were, for example, sixty thousand respondents in the graduate student group, and thousands and thousands of respondents in the faculty group. I wrote Marty when I read this book whether there were enough respondents from the law school world to make a study of the responses feasible, and he wrote

back yes, that he'd thought of milking this material in writing a piece in honor of David, the sociologist at Harvard, you know.

DR: Riesman?

CA: Riesman.

DR: David Riesman.

CA: A festschrift for Riesman, and then he decided he didn't know enough about law schools to do it, but he would be glad to work with me, and why didn't I come up to the Hoover, and we'd work together, which I did, and I'd been working on that until about five years ago. There are now, I published two pieces based on that material, and one of them was in the Minnesota Law Review on affirmative action, which you may have seen, delighted Gail Heriot [laughter] ...

DR: Yes, that's a very famous article.

CA: ... and the other one was on, called *Legal Education and Its Discontents*, which was published in the Journal of Legal Education, but there are now two thousand pages, which I gave to the American Bar Foundation, together with all the original tapes containing the basic data, and they're trying to find somebody who is willing to finish this work. I have no intention of [laughter] doing anything more about it, but it's all there, and I did that. I went back to the Hoover in '83 to continue that work.

DR: And, of course, Professor Lipset you referred to is the great social scientist Seymour Martin Lipset.

CA: Right, and I did, you know, while I was doing that, I did this thing, and that gave me great pleasure, in honor of Willard Hurst. I did that while I was at the Center and later up in the '80s. That was on law and social change.

DR: That was published ...

CA: ... in the Wisconsin Law Review ...

DR: ... in the Wisconsin Law Review.

CA: Yeah, in honor of Willard. And then also in the U. Ca. Law Review, which I enjoyed, a political scientist who's a friend of mine, whose name I'm ashamed to say I've forgotten, invited me to give the first Clark Kerr lecture in social science, which I was delighted to do.

DR: That's a great honor.

CA: Yeah, and the U. Ca. law faculty didn't know about it until I arrived [laughter].

DR: A stealth lecture!

CA: Which is again a commentary on the role of the law school within the university.

DR: Carl, let me ask you to reflect on some of the professional associations you've been involved in and active with over the years in legal education. I know you're a long time member of the American Law Institute ...

CA: Right.

DR: ... and have been involved in that. What has that meant to you? Speak about your involvement in the ALI.

CA: Nothing of great deal, actually. I've always said that I love the ALI, because it's the one place in which I could still be a young Turk at my age [laughter].

DR: I'm sorry, that's too provocative not to follow up. What do you mean by that?

CA: I think invariably I've been on the left of every decision that they make [laughter] all the time.

DR: Which may say more about the ALI.

CA: Well, could be. For example, on corporate government, John Frank and I maybe four others, give us the benefit of the doubt, were the only ones to vote against the corporate government document, the adoption at the last minute.

DR: Professor Mel Eisenberg, my former colleague, was, I believe, the reporter on that.

CA: Right, right. I don't think he was too happy about the way things turned out. And, of course, it didn't meet any of the problems which the corporate scandals ultimately divulged, which was, I think, something the ALI has never reconciled itself with. It's never said, "what went wrong that we didn't anticipate this kind of development and come up with suggestions that would have warded this off," No, they just went ahead and did it, but that was a very very political document from start to finish.

DR: Mm-hmm. How about the Administrative Conference of the United States, your interest in administrative law would have been. ...?

CA: Yeah, well, that was a great pleasure, because that was a place where old friends could congregate, and I would see Ken and Walter Gellhorn and Harold Leventhal regularly. You know, just as an amusing thing, when Nino Scalia, Justice Scalia, became Chair of the Administrative Conference, he knocked me off as a public member of the Conference, and he said that it was due to the, he wanted rotation as a principle, and I had already served, and he wanted to rotate the public membership. Well, maybe so.

DR: As you know, the Administrative Conference fell by the wayside as Congress in the early 1990s, I believe, when Congress declined to appropriate money, but now it appears to be resuscitated, at least in the last Congress. I assume you think that's a good thing, that they've brought ...?

CA: No, I have mixed feelings about it, because it seems to me that it exhausted its subject matter in many ways. It was, as you know, procedurally oriented, and how much can you go over and over the same thing?

DR: Apparently, a good deal [laughter].

CA: Apparently, a good deal. The question is, you know, is it worth the money and not only the money but the time and effort of very talented people. Are their talents being used to maximum advantage? And I wrote to Roger, when he headed the thing in Waltham, a proposal as to the future. I always thought it ought to get into substantive administrative law. It's very interesting that you have a body of law made by administrative agencies that's become extremely important to the society that nobody evaluates on a regular basis. Law reviews don't. Law students don't. In fact, our California administrative law effort is one of the small efforts to try to do something along those lines.

DR: You're speaking of our Center for Public Interest Law.

CA: Bob Fellmeth. Yes, I mean he's pioneered in that, you know, trying to do that. And, of course, this is what I tried to do in the study of the FTC, which preceded the Nader stuff, which they then used to advantage, and Bob was on that Nader group, but there is no public body that says, "Well, we're going to be watchdogs on the FTC, or we're going to be watchdogs on the FCC," or law reviews that have been dedicated to following the SEC or the like, and I thought that the future Administrative Law Conference of the United States, if there was to be one, ought to be oriented substantively in a basic way.

DR: Mm-hmm. Well, let me ...

CA: And, in fact, now, it's very interesting to talk about how these things switch. You remember that, when Ken Davis wrote his first volume, it was questioned as to whether there was such a thing as administrative law that applied across the board, and the feeling then was that each agency had its own procedures suited to its own tasks, so we've gone through a development of general administrative law. I noticed there's going to be a workshop at the next meeting of the AALS in administrative law which is going to deal with the question what are the substantive problems of a particular agency, I forget which one they're going to do, and what are the procedures [laughter] that'll be best to carry out these objectives, which is a very good approach.

DR: It's conversation that's come around full circle.

CA: Right, it's come around, but it's a good development. You have to do both.

DR: Well, let me pick on the theme we discussed previously, remembering your comment about the notorious 1959 double-ALS meeting, ...

CA: Yes.

DR: ... and I'd like you to comment on the emergence of the Law and Society Association, which, I take it, in part emerged from that whole era, that development.

CA: Yes. Well, as I may have mentioned, my experience heading up these joint committees of the American Political Science Association and the AALS in the '60s showed that neither organization, neither the AALS nor the APSA, were really suitable for promoting the kind of research and teaching that we were interested in. While this was going on, the people that I mentioned, Ball and Red Schwartz and Yeagey, were developing the Law and Society

Association as a section of the American Sociological Association, and I believe it was in October 1966 that Yeagey wrote the incorporation papers for the Law and Society Association. It was formed as an independent group. The Russell Sage Foundation had given them a small sum of money to put out the LAW AND SOCIETY BULLETIN, and that developed into the LAW AND SOCIETY REVIEW.

DR: Which is now, I believe, called LEGAL INQUIRY or something like that. It's changed the title, but it's the same journal.

CA: No.

DR: Or is that a different journal?

CA: No, that is the journal that the American Bar Foundation has ...

DR: Yes, yes.

CA: ... is the Inquiry thing.<sup>1</sup> The LAW AND SOCIETY REVIEW still goes on, does it not? Yeah, as an independent journal, and it was there that, to show you the emphasis on sociology, that I had this exchange with Skolnick on what the role of sociologists could be like.

DR: Jerry Skolnick, yes.

CA: Yeah.

DR: So the Association has grown to a very large association.

CA: Yes.

---

<sup>1</sup> Ed. Note: The journal of the American Bar Foundation is entitled LAW & SOCIAL INQUIRY.

DR: Their annual meetings attract hundreds of law professors, sociologists, ...

CA: Right.

DR: ... even political scientists, and what's particularly striking is the involvement of international individuals, so much so that every fourth year, I believe, the Law and Society Association meets abroad.

CA: Right.

DR: Would you forecast that the Association would have become such a thing?

CA: I would've hoped so, I would've hoped so. You see, there again, whether it has produced the kind of scholarship that lawyers would like to see is a separate question, and then, of course, it depends. What I had hoped, and I don't know why that developed, didn't develop... When I got back from the Behavioral Sciences Center in '59, the thought occurred to me that there ought to be a center like that in every university, that the universities were originally communities of scholars, but the concept of a community of scholars was long lost, and such disparate efforts and very little communication, very little view of this intellectual enterprise as a unit, that why not create these centers in every institution? Well, it didn't occur. I don't know, do you know anything about Washington University's ...

DR: Yes.

CA: ... interdisciplinary center? That's one of the few efforts as such, and it'd be worth following. The effort at Northwestern, which Vic Rosenblum led for a time, has collapsed for all practical intents and purposes.

DR: How about ...?

CA: And I think the Berkeley effort has not gone very far.

DR: That was my next question. This is not my role, but let me offer the thought that, from my vantage point of being on the faculty there for ten years, that that experiment has not succeeded ...

CA: Right.

DR: ... in integrating the social science and the humanities with the law program ...

CA: Right.

DR: ... other than the common enterprise of buildings next to one another.

CA: Right.

DR: I know at NYU there's a law and society program that's opening.

CA: Well, they got Skolnick to come there to try to do that, but it's difficult to know why isn't it working. You know, we went into that last time. I think they're very difficult problems, but I think still that it would do good for every university to have such a center, if nothing else, to get to know people in other parts of the university.

DR: What would you think the next, to pick a time frame, next twenty years, will look like in terms of legal scholarship and law teaching? Do you believe there'll be big changes?

CA: Well, there's going to be, unfortunately, there always is, and this is almost a natural development with any discipline, more and more specialization. I'm beginning to have difficulty. I used to teach copyright law. I find it difficult now to read articles on copyright law and the Internet [laughter]. I don't know what they're talking about, and this again is a development

that's leading to separatism and heightened specialization and expertise and very little communication with anybody else, and there aren't any underlying factors that are making for integration. Do you see any?

DR: No, I agree with your assessment entirely, more specialization and more attention on specialized knowledge and information.

CA: Right, and by the way, take law and economics. Ronald Coase has told me, before we boast too much about the Law and Society Association, that the Law and Economics Association is the largest professional association in the world. I'm sure he's right.

DR: Mm-hmm. The hegemony of economics.

CA: Yeah [laughter].

DR: Well, Carl, there're so many topics we haven't touched on, and there's no natural ending place, and I won't try to put a period at the end of the sentence. I will just thank you for all that you've meant to me and meant to us, and thank you for indulging us in having this wonderful conversation. It's a great honor to us.

CA: Well, thank you for taking the trouble to talk to me about it.