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## Conversations in Legal Education: Frank Engfelt, June 13, 2005

Frank Engfelt

*University of San Diego School of Law*

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## CONVERSATIONS IN LEGAL EDUCATION:

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

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Narrator: Professor Frank Engfelt

Interviewer: Ruth Levor

Recorder: Ruth Levor

Date: June 13, 2005

Accession No.: OH-LRC-Engfelt-2005-3a

TAPE 3a: SIDE A

RL: This is an interview of Professor Frank Engfelt 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 Ruth Levor at the Engfelt home on June 13, 2005. This is the third session of this set of interviews. Tapes and transcripts of this interview will be archived at the University of San Diego's Copley Library.

So, you want to tell me some stories about the University of Chicago. Go right ahead.

FE: Since you and I both went to law school, you probably recall that one of the biggest legends in legal, oh, not jurisprudence, but ...

RL: Mythology?

FE: ... almost a myth—Dean Roscoe Pound,<sup>1</sup> and he got the name Dean Pound because he was Dean of the law school for so long. One of my jobs at the University of Chicago was to run the law student dormitory, and there was a large lounge there. And whenever they had visiting dignitaries, it was my job to do whatever was necessary to set up this large lounge for a luncheon. The day Dean Pound was there he taught a course in Corporations, and I decided to sit in, because due to the fact that I worked while I was in law school from twelve to five every day,

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<sup>1</sup> Dean of Harvard Law School 1916 - 1936

there were certain bar subjects I never got around to taking in law school. My two highest grades were in two of those subjects, but that's another story.

Anyway, one of the courses I had not taken was Corporations, and he took over the Corporations class, and he first apologized for not having his notes with him because he left them on the airplane, and he talked about an opinion which he himself wrote when he was a young man and was on the Nebraska Supreme Court. The amazing thing about the class was this was a very complicated suit by a minority shareholder involving lots of money and so forth and so on, but he—this man was eighty-eight years old at the time—from the top of his head remembered exactly the number of shares involved, who had what, the amount of money involved etcetera, etcetera.

A couple of hours later, we were all gathered for lunch, and before lunch, Dean Levy came up to me, and he said, "Frank, are you a drinking man?"

In those days I was, and I said, "Yes," and I said, "I just made a visit to the local discount liquor store."

And he says, "Well, Dean Pound likes to have a drink with his lunch. He likes bourbon."

And I said, "Well, I just bought a fifth of Jim Beam. I don't particularly care for it, but if he likes it, then fine."

He said, "Would you mind getting it, and I'll see that you get it back."

During the luncheon, and this is not an exaggeration on my part, he sat down. He opened that bottle. He had a water glass in front of him, and before lunch was over, he had finished the entire bottle. No ice, no water, just poured it in the water glass like it was water. I found that to be quite amazing, because he continued to tell us about all kinds of things, and he was very lucid.

The other thing I remember about Chicago is that we had a visit from Tom Clark, and he was, of course, an associate justice on the Supreme Court<sup>2</sup>, and you may recall that, in a book written about Harry Truman, Harry Truman said appointing Tom Clark was the biggest mistake he ever made. I for one found out, much to my surprise, that the longer Tom Clark was on the Supreme Court, in my opinion, the better he taught [*sic*], and he wrote some pretty good opinions, particularly in his later years.

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<sup>2</sup> Tom C. Clark, Associate Justice 1949 - 1967

But anyway, Tom Clark was having lunch with us, and he was, as they say, common as an old shoe, and he was a real charmer and real nice, but of course, there were a lot of snotty law students, and after the lunch, he asked if there were any questions, and one question was, “Justice Clark, do you write your own opinions, or are they written in the main by your clerks?”

And he said, “I always write my own opinions. My clerks do the research, but they do none of the writing.”

And just loud enough to be heard from the back of the room, someone said, again a student, “Thank God, I didn’t think the clerks were that damn dumb.”

Those are two of my remembrances of the University of Chicago and meeting with people who had done something in their lives. One of the things Dean Pound said was that he had just received an offer from Hastings to teach there, and in those days, Hastings hired no one except retired law professors, and Pound said that he wrote back to Hastings, “Thanks, but no thanks, I’m not old enough yet.”

And he went on to live for another six or seven years, I think.

Anyway, getting back to the University of San Diego, as is true of any institution as it gets larger, you end up with more and more bureaucracies. You end up with more and more rules and regulations. You end up with more and more committees.

RL: And did you have a lot of committee assignments as time went on?

FE: Oh, yes, I did. For quite a while, I was on the Admissions Committee and would spend hours in my office going over files.

RL: Did you work with the Director of Admissions at that time, or did the faculty do it without any administration?

FE: Well, in those days, and it probably hasn’t changed, it’s a numbers game, and if an applicant has a sufficiently high score on the LSAT and his or her GPA, then they are admitted just based upon the numbers. I used to get all the files on the people who were referred to as possible diamonds in the rough. They didn’t make preemptively admit status, which is the

terminology they used, but someone we might wish to admit if someone would take the time to dig into the file. I was one of those someones. I spent quite a bit of time going through those files.

I found that the written part of the application where people say why they want to be a lawyer quite often became quite repetitive. You would think that everyone applying to law school had been raised in a dysfunctional family, had been abused physically and/or sexually by one or both of the parents, lived hand-to-mouth, eked out an existence, and so forth and so on, and finally through striving, etcetera, etcetera, graduated from college, and now was going to become a lawyer to see that these things never happened again, and they were going to save the world. I became somewhat cynical after a while. I had been accused of being cynical anyway in my lifetime. I tried to tell my students, “I’m not a cynic; I’m just a realist.”

I began to read these applications with sort of a jaundiced eye, but I didn’t care too much about that part of the application. I was more interested in what did the person do in college and where did they go to school and what courses did they teach [*sic*]. I was much more prone to admit a student who went to MIT and maybe had C grades as opposed to someone who went to Fullerton State--my excuse is that a [grandson?] of mine graduated from Fullerton State, so I use that as an example—maybe specialized in courses like, oh, I don’t know, Drama Abroad or Manual Arts or some such thing. But anyway, I would go over these files and make my recommendation as to whether or not they should or should not be admitted and spent literally hours on that.

I spent hours, as I said before, in traveling to Chicago to interview faculty applicants. I would spend hours on things like Curriculum Committees, and I don’t know, they had so many committees. Frankly—I was well named, by the way—I couldn’t stand it. It was sort of a standing joke around the law school that everyone hoped that they would get appointed to a committee that I was the chairman of because they knew that I would probably never call a meeting, which I usually didn’t. Finally, after having been up there for so many years, I would usually try to strike a deal with any incoming dean--that was when we had sufficient bodies to do all this administrative work—that I would be more than happy to teach my classes and meet with my students and spend time with students on an individual basis in my office, which I always did and do other things, but keep me off of committees. I don’t want to do any committee work, and towards the end, I just frankly told the new incoming dean, “I’ll show up for the first faculty

meeting and see how you're doing [laughter], but thereafter, don't expect me to come to faculty meetings.

RL: But it didn't sound like your enthusiasm for teaching and the students waned in the same way that your ...

FE: My enthusiasm for teaching never waned. I continued to enjoy teaching. I made the comment somewhat facetiously that, if nothing else, when I taught a class, I wanted to feel after I finished that *I* was at least entertained, that *I* was at least interested if no one else was. I never taught a class in my life where I just skimmed over things or did it to get it over with, no matter what the student body might be and no matter whether I had any students who were particularly interested.

RL: Did you teach mostly introductory courses, first-year courses?

FE: In the beginning, yeah, in the beginning. I taught Contracts for thirty-seven years.

RL: Has it changed much?

FE: The law of contracts?

RL: Yeah.

FE: No, in spite of law review articles you might read, no, it hasn't changed much. You still need consideration to make a promise binding. If anything has changed at all in the law of contracts, it's changed because of the attempt on the part of legislatures to protect people. Laws which are designed to ensure that people don't sign things which are stupid and not in their best interests. I've always maintained that these laws look good and maybe make the legislators look good, but they have done no good whatsoever, because the people for whom they're designed to protect, they don't give a damn. And I'm just not talking about people I used to refer to as PDS's.

I got called on the carpet for that. It refers to poor dumb slob. One of my female students took umbrage over the use of PDS as poor dumb slob because I guess she identified with the group.

After Kristine Strachan<sup>3</sup> wanted to know what was going on, I told her, and I got so upset over the incident that I spent the entire seventy-five minutes of the next class listing things which offended me. If you may recall, there was a time in the history of this world of ours, including legal education, where the favorite word for many people was “offend.” “I am offended by that.” I, on my way to school that day, in my head thought of things that offended me, and before class, I put down a partial list. I seemed to end up with fifty-four things that offended me and spent my class talking about those things.

RL: Was that on the final?

FE: No! It wasn't on the final. I was venting!

RL: [laughter] Right.

FE: Then, of course, Kristine nicely told me that, again with her great big smile, asked me what these things that offended me had to do with the law of contracts, and I told her, “Not a damn thing!”

I was just fed up with all these people who were offended by anything they felt like being offended about. These laws which are designed to protect people contain things like “Do not sign this document until you've read it”—blah-blah, blah-blah, blah-blah, and all this kind of ...

I'd inform my class that when I used the term PDS, I did not necessarily refer to people who didn't make any money or to people who live in a certain part of the city or town. I said I was referring mainly to a large majority of the American people, and I cited my brother as an example.

My brother had been a schoolteacher for, oh, I think he finally quit after twenty-six years, and he's one course shy of having a Master's degree. He's not uneducated. He's clearly not illiterate since he teaches English, but I remember asking him one day how much interest was he

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<sup>3</sup> Law school dean 1989 - 1997

paying on his credit cards, and his response was he didn't know. And I said, "Why don't you know?"

He said, "The only thing I'm interested in is I don't have to pay twenty-five dollars a month or something on each card," which I think is quite typical of most consumers in the United States of America. I just read an article the other day—I don't know how many billions of dollars they are in debt. But the people for whom the legislation has been designed don't care about it.

I remember when they tore apart More Hall, part of More Hall, that is, the large room downstairs and turned it into a large lecture hall. It was called the Fletcher lecture hall, and one of the first things we did is, it had a movable wall in it, which supposedly was soundproof, so we could teach two courses at the same time. It never worked, but I remember one of the things that occurred shortly after it was finished is that they opened up the walls, and they invited in all the students to attend a discussion between those people who at the time were teaching Contracts and others who were interested in this so-called social legislation. I know Paul Wohlmuth was there. I was there. I don't know, Larry Alexander may have been there. I know Jack Kelleher had left by that time, I'm sure he had. But it turned into sort of a rooting section that the students were having, to root for their professor.

I could not resist at the time. Marci nicely went to the grocery store or the drug store and purchased for me a bunch of sponges and some duct tape, and I took this to school with me in a large paper bag, and of course, we were all up on the podium in front of all these students. About two hundred students had gathered for this talk-off, I guess you might call it, because we were going to take different positions. I did this after I had told my colleagues I'd take any position they wanted me to, because you know, I could argue any position. I was more interested in arguing the position which they wanted me to argue, which was that the only thing this social legislation has done was to drive up the costs of goods and services. The people who were supposed to get the benefit of this didn't care, and therefore, it caused more paperwork for the sellers, and it was completely ineffective.

Anyway, we marched in, and of course, everyone's eyes were riveted on Engfelt's big brown paper sack. What was he bringing in there? When things quieted down, I announced to all those gathered that, since we were in a brand new facility with brand new carpeting, I had

brought in, I hope, a sufficient number of sponges and tape, and I would pass them out to any of the bleeding hearts who were in the audience so we wouldn't get the carpet screwed up. Of course, we got a big laugh out of this.

RL: That's a long way to go to get a laugh.

FE: Yeah. I did not get a laugh out of a couple of my colleagues, who were dedicated bleeding hearts in my opinion.

RL: I'm trying to think who would have been, let's call them something more politically correct, more liberal on that point of view than you.

FE: Paul Wohlmuth.

RL: Okay, but not Larry Alexander.

FE: Mmmm, I'm not even sure Larry was there. No, Larry Alexander is clearly not a liberal. I don't think he is a typical libertarian such as Bernie Siegan, but at least insofar as the constitutional issues are concerned, Larry is quite conservative. I don't think Larry was there. I know Paul Wohlmuth was there, and there may have been one other person there.

RL: It wouldn't have been Mike Kelly at that time, would it?

FE: No, I don't think we had hired Mike Kelly at that time. Jack Kelleher had left for other climes, and I don't know how Jack ended up.

RL: So who would you say won?

FE: Oh, clearly, I did.

RL: Okay.

FE: In my opinion, I won, and insofar as my students were concerned, I won. Did you ever meet Paul Wohlmuth?

RL: Yes.

FE: Paul took the longest time to say nothing than anyone I've probably ever met in my life. Nice guy. I would hate to have been a student in his class. His students would come to me and ask if they could transfer. They referred to themselves as space cadets, because he was always on quote another planet someplace. I could say this for Paul—He never changed. He stuck to his guns. I still don't know what his cause of death was. It was never announced. To this day, I don't think anyone's ever said what happened to Paul.

RL: Whatever it was, it was very sudden.

FE: Yeah, one night, he was dead. I remember Paul sitting in that chair right over here when we had a party here for, was it for law review? I know we had a party for the law review people. We once had a party here for what we called the minority admissions program, and I taught the entire summer just to those people on the minority admissions program, and all I taught was, you know, what you have to do in order to survive--how to read a case, what you're expected to do when you read a case, and what you're looking for. For some of them, I would actually get tutors from outside the law school to teach them to actually write. They'd never been able to, you know, they couldn't write a sentence.

RL: And this was a group that was seen at that time as needing a leg up before they started with the other students?

FE: That's right, yeah, people who were admitted who would not otherwise have been admitted based upon, and I'll be politically correct here, their diversity. We had them all over here to the house, and I became very good friends with these people.

RL: Do you think this was at the beginning of the law school's effort to diversify the student body?

FE: Yeah, I think so. Probably, what we were doing in those days would, even though it was viewed by many as being a great step forward in those days, by many today would be viewed as being discriminatory, and clearly, we were being discriminatory in favor of these people. I know at least one of the people in that group went on to become a superior court judge. Another one, I recall, bought my Volkswagen convertible and came back to see me years later dressed to the nines, told me he had sold the Volkswagen many years ago and was now driving a Mercedes Benz and was the head of some bank in New York, so we did have some real successes, and successes here playing pool on the pool table.

These things don't happen any more. We don't have that program any more. I really don't know if the present faculty associates with students in the same way as we did in those days. I don't know to what extent faculty spend time in their offices talking to students about things. The things you talked about, or at least the things I talked about, to students quite often had nothing whatsoever to do with the law. A lot of people would use me as a surrogate parent, like I was their mother or their father. They'd come in and unload their burdens on me, and in spite of the fact that we had a law school chaplain, they preferred someone else.

I've had students who would come in and talk to me and would end up crying. Quite often, I would have first-year students come in to talk to me, and it was obvious that they shouldn't be where they were. It's very difficult for someone who has been admitted to a graduate school such as law school, particularly with family pressure, and my grandpa was a lawyer, and so forth and so on, to come to the conclusion that this is not their thing, and I would try to tell them, "The best thing for you to do is, you don't have to think about it as quitting, find something else to do. There are a lot of people who can't play the violin, they don't get upset and threaten suicide because they can't play the violin, and you shouldn't be so upset because you're

not very good at this. And don't fool yourself and think that you are good at it." For some people, law school is easy. For me, it was easy. For others, it's very, very difficult.

RL: Over the years, did you find our students to be very competitive?

FE: As I said before, mainly the upper maybe twenty-five percent. They were the ones that were very competitive. Particularly towards the end of my teaching, when all of a sudden, law firms were paying six-figure incomes to these people even before they passed the bar examination, but those law firms would only interview the top ten percent of the class, hence it was competitive. For many students, it was all about money. They didn't care if someone such as I told them that that firm will have your salary back within at least six months. You will be working seventy, eighty hours a week. They will be billing out your services for x number of dollars an hour even though you and I both would agree, at this point at least, that your services are not worth that amount of money. They don't care, and a lot of those people get into a terrible situation, because they initially start out with a high-paying job. They work their tails off for five, six, seven years, and they don't become a partner. They know they're never going to make it, and so then, what do you do?

It's also very difficult for people who end up doing things for the large firms that they don't particularly like to do. You say you worked for a firm for x number of years, but quite often, you are assigned to cases that you'd just as soon have nothing to do with, and this happens to the students who even land jobs with high-paying firms. I don't care if it's in Los Angeles, San Francisco, or New York City, Washington, D.C., or even here in San Diego. But that's where the competition comes in, and as is true of, I don't know if it's all things in this life of ours, it's true of most things, it all comes down to money. They're looking for money, which they feel will lead to prestige, which will lead to status, etcetera, etcetera.

RL: Let me take you back to something you were talking before about, with the committees, how, as the different deans came in, you kind of pulled back and said, "I'll have this much and ..."

FE: Enough.

RL: Right. You've been through almost all of the deans, except Dean Fanning perhaps, who were at the law school. How did you see the role of the dean change over the years?

FE: I don't know if the role of the dean changed over the years. I think what happens is that individual people who become deans view themselves in a certain way, and hence, the role they accept is what they think they should do.

## CONVERSATIONS IN LEGAL EDUCATION:

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

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Narrator: Professor Frank Engfelt

Interviewer: Ruth Levor

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TAPE 3a: SIDE B

RL: So different deans interpreted the role differently.

FE: And again, depending on what stage we're talking about insofar as the law school is concerned. Joe Sinclitico, when he was dean, was very concerned about doing something about raising faculty salaries. I mentioned in another interview that his great hope at that time was to get salaries up to twelve thousand dollars a year. When the school started to get larger, we would get deans who felt it was their job to increase the national standing and prestige of USD and felt that the quickest way to do this was to hire people from other universities who were well known. Typically, these people were like Herbert Peterfreund, Homer Kripke, Bernie Siegan, Ken Davis, people who had already made a very big reputation somewhere else and were old, you know, in certain cases were ready to retire, and what better place to come to retire than San Diego? Our biggest drawing force in the beginning, both for students and for faculty, was the weather here, which is really why we have so many people here right now. I don't think people come out here to spend millions of dollars for a three-bedroom, two-bath house.

Other deans would come in and think, well, that's not the way to go. We have enough distinguished visiting professors--the bestowal of title of Distinguished Professor was one of the draws--we should be developing the faculty, it's almost like a baseball team, we should be bringing in rookies and developing our own farm system and get these younger people to come in. And of course, the difficulty with that way to go is that not all these people stay when they've published what's necessary to become a full professor and to get tenure. It's sufficient to make them attractive to other institutions, and these people are willing to go to other places in the

United States, again for prestige, and legal education is different than if you're out practicing law. You're not necessarily looking for big bucks, you're looking for prestige. You're looking for the fact that I am a professor at the University of Chicago, or I am a professor at Yale or Harvard. One of our better professors went to the University of St. Louis, which is a good law school. He himself went there because he felt it had more prestige than the University of San Diego.

Even after a school becomes accredited, [inaudible] higher insofar as accreditation process is concerned, deans, I think, strive to make the school more prestigious. If nothing else, they can bask in the glory of that prestige and that reputation, but I think most deans, at least the ones that have some sense, get to the point where they say, "I've had enough." On the other hand, I've seen deans who get it in their blood, and they can't stand going back to being a professor. Joe Sinclitico was that way. When he founded the University of Puget Sound, he was so happy that he could get back in and do it all over again, go through the whole process again. He was so enthralled and thrilled by the possibility that he got me to go up there for a year.

I've never been able to understand some deans, and I've lived through a lot of them. I've told colleagues of mine, "Don't worry, this too will come to an end."

I've also said over and over again, and it's true, "I don't know of anyone who ever felt while they were on the faculty at the University of San Diego, got along with, and was a big buddy with every dean."

I found it to be true that you would be on one side or the other of the fence. I for one could never straddle the fence. I would either come to the conclusion this person is doing a wonderful job, this person is a wonderful person as a person, and I would be on his or her side of the fence. I said "his or her." Insofar as deans are concerned, we've only had one female, and I obviously was on the wrong side of her fence. I never felt that I was on Don Weckstein's proper side of the fence. Joe Sinclitico, George Hickman, Joe Brock, and particularly Sheldon Krantz, as we got larger, were people with whom I got along very well, people I admired and still do. Of course, all except Sheldon are now dead, the people I mentioned. I thought Sheldon Krantz did an excellent job.

I still remember when Sheldon Krantz was hauled away in an ambulance from his office one day, and I heard about it after I got out of class. I believe he had had a stomach ulcer that had ruptured, and he was hemorrhaging when they took him away. I gave him a copy of "Lonesome

Dove” to read while he was in the hospital. When he got out of the hospital and was all recovered, he called me into his office one day, and he says, “Frank, I’ve been trying to figure out something ever since I read that book that you gave me in the hospital. The whole time I was reading that book, I decided that you and I were the leading characters in the book, but I have not been able to figure out whether I’m Gus or you’re Gus, or you’re Woodrow or I’m Woodrow.”

We had a good time talking about that as to whether or not I was Augustus McCrae as opposed to being Woodrow Call, which if you read the book, you know they’re two completely different characters.

RL: It’s still on my pile of books to read.

FE: It’s one of the better books I’ve ever read. Larry McMurtry wrote, I think, four or five books with the same characters, but forget about the rest of them. “Lonesome Dove” ...

RL: No, I have it right on my table, but I haven’t gotten to it yet. Did you resolve the question of who was who, or did you leave it as a philosophical ...?

FE: We kind of decided that I was more like Gus, and Sheldon was more like Woodrow. Woodrow was kind of staid and stuck to the rules all the time and so forth and so on, and he was the leader, and Gus was more mercurial, and Gus would, Gus, if you’ve read the book, was more interested in doing what he wanted to when he wanted to do it. He was always worried about things such as did he have enough liquor to drink, and were there enough whores around [laughter]. As I’ve told my students, I said, “That book gives a new meaning to the word ‘cowpoke,’” because Gus would always be going into town to get a poke [laughter].

And again, as far as students are concerned, some thought that was funny, and others didn’t know what I was talking about, and others, I guess, didn’t think it was so funny. But these things come out of my mouth, and I can’t help it. That’s the way I am [laughter].

RL: The other thing as the law school grew is it got more administrative, and I’m interested in that, not so much in terms of right now, the bureaucracy, but just of the people, the people that

you remember coming in, administrators, secretaries, and the like, and who you got close to, and who you enjoyed hanging out with.

FE: Oh, it seems like Verna and Pat have always been in the front office, director's office, whatever you want to call it. I've always been very close to Verna and Pat, and Verna had her health problems and retired, and Pat's still there. Sylvia Loza, same way, I've always, Sylvia Loza and I have never greeted each other, we always, instead of saying something, we always have an abrazo. We will hug each other. I speak some Spanish, and we used to give each other greetings in that way.

Carrie Wilson has been up there for an awful long time. I remember a wonderful time we had at Carrie Wilson's house one night when she threw a party for all of the visiting students from foreign countries. I became close with some of those students. I think I mentioned before my father was born in Sweden, and there was one fellow there from Sweden, and we had him out here for Thanksgiving dinner, and he had never had pumpkin pie before. I recall he had three pieces of pumpkin pie. He decided he really liked pumpkin pie. He brought some French student with him, and the two of them ended up in the hot tub, and they both decided it had an aphrodisiac feeling about it, so I left them [laughter].

But anyway, Carrie Wilson also had a party for all the foreign students, I remember. I don't know if you've ever been to her home out in Point Loma, but ...

RL: It's quite a home.

FE: Yep, it's quite a place. I remember things like that.

Secretaries I've gotten to know—all of my former secretaries, no matter where they went in the law school, and no matter where Marci and I went around the Christmas holidays, we would always bring them something. Marci typically would make homemade candy and put it in a tin, and there figured out to be about twelve people, people like Diana ...

RL: Githens.

FE: You know Diana, Diana Githens, Perla, and of course, Verna and Pat and ...

RL: What kinds of work did you give them to do as your secretaries?

FE: Almost nothing. It became obvious, should have become obvious, after a while that I didn't need a full time secretary. I'm the first to admit that I did not spend my time writing learned articles or not so learned articles. I just didn't spend my time doing that. I did write a book once, which resides someplace in some filing cabinet, probably in the dean's office. This was during a sabbatical leave. I thought it would be a big success, but after I got about halfway through with it, I became bored with the entire project. It was a book on conflict of laws, and as a former law student, you may have liked it, because its big selling point was it had no footnotes in it.

One of the things that has always disturbed me about reading anything that deals with law is that you'll sometimes find more footnotes than anything else. If you look at "Corbin on Contracts," for instance, and look at the official version of "Corbin on Contracts" and not the student edition, which is just one volume, you'll find that the difference in size is due to the fact that, in the student edition, all the footnotes have disappeared, and if you go through the regular version, you can sometimes find one or two lines of text at the top, and the rest will be all footnotes. My big contribution was going to write a book on conflict of laws which even my mother could read and understand, which was always my test insofar as I would tell my students, "You can write something and charge people money for it, at least write something which people can understand. Ask yourself the question," I would say, "it may be the wrong question, because I don't know all your mothers, but ask yourself the question, 'Will my mother be able to read this and understand it?'"

RL: So that was one of your sabbaticals. Did you have any memorable sabbaticals?

FE: No. As a matter of fact, I would guess—you're supposed to be entitled to a sabbatical every seven years—

RL: That's right.

FE: ... and I think I've had one.

RL: No!

FE: Yeah, the entire time I've been up there, and that was it. One year, we were planning on going to Europe and teaching in one of the foreign programs over there, one of these things that Bert Lazerow runs, and it was the year, I think, that was our twenty-fifth anniversary, wedding anniversary. They were all, you know, things that kind of coincided, and our children were young, and we finally just decided it's too much of a hassle to uproot the kids to go someplace just for one summer, get housing, and what do you do with the house, etcetera, etcetera. Like I say, I can only think of one sabbatical I ever took, and if you don't use them, you lose them, which never bothered me.

RL: Let me ask you a more philosophical question. What kind of advice would you give to a new law professor?

FE: I would tell a new law professor, "No matter how brilliant you may be, no matter how scholarly you may think you are, no matter how beautiful your elocution may be, no matter if you feel that you are the most eloquent person you've ever listened to in your entire life, you have to go into a classroom and teach. You've got to reach out to these people and get them interested. If it involves telling stories or telling a joke, so be it. You have to say to yourself, 'One, I can't go in there and, as I've said before, just talk to the top ten percent of the class,' although that would be a wonderful thing if you could do that. You're forced to teach to the middle, but when I say 'teach,' teach in a way that forces the students to think."

It's a hard thing to do, because people generally don't like to think, especially don't like to be forced to think by an individual who is forcing the issue. The Socratic method of teaching forces the issue. You ask a student a question, and then you ask the student another question, and you do run into the occasional student who will refuse to say anything.

RL: Did you ever give them credit for their participation in class?

FE: No. I always derisively refer to those points as brownie points, and I never gave points nor took away points for non-participation. I told them from the very beginning, “Your grade in the class is determined by the grade you get on your final examination. I don’t give so-called push points or brownie points because of class participation.”

As a new professor, you must realize that, in addition to finding students who don’t want to participate, you’ll find some students who want to take over. In a class of eighty-five or so, I’ve found that it’s quite typical that you might find some people who are certifiable nut cases, and you have to learn how to handle that. I still recall, I can’t think of his name right now, a person who was in several of my classes who would get up and make speeches about states’ rights. He went on to be some sort of a right wing politician someplace. You’ve got to be able to handle that.

Particularly in later years, when the United States, for whatever reason, decided it was going to be politically correct, it’s not that easy being Frank, and I say that, not only in the sense of the word “frank,” being candid, but being myself and saying what you think and saying things that you mean. I am the first one to admit that I was dragged almost screaming into this PC era. I went through periods of time that I didn’t enjoy at all. I don’t think I’m anti-feminist, but at the same time, I found that some of the things these feminists tried to do were overboard.

The use of the language got to be a point with me where people would criticize someone’s teaching performance, and I’ve seen this--I’m not making this up—where we can’t hire this person, or that person should not be considered for promotion, because that person only used the pronoun “he.” It got to the point with me where I saw casebooks which were written only with the feminine pronoun. I saw casebooks where writers tried to make everything an it, and it’s impossible to neuter the language, you know, it becomes very strange. I finally got used to saying “he, she, or it.” That was my standard, he, she, or it, but I couldn’t help but saying to the students, “Say that real fast, and what does it sound like?”

Again, depending upon the students, some think it’s funny, and some think, “Engfelt is a dirty old man, or he’s against everything I believe in,” and so forth and so on.

I would see announcements on the bulletin board to go see something which was the herstory of something, as opposed to the history. I would have a visceral reaction to this. And then, of course, I can't help it, I like, I am what is called a paronomast, that is, a person who enjoys puns. Paronomasia is the love of and the use of puns. I couldn't resist saying, "Are we now going to have hersterectomies instead of hysterectomies?" Plays on words that I thought were funny, others, of course, didn't think were so funny.

I had the same problem when people were wearing bib overalls and weren't wearing underwear or shoes. I [inaudible] in my lifetime that, no matter what the cause may be, that people who are in the forefront of this new cause get carried away. They don't last. Many times the cause itself doesn't last. The big leaders get carried away.

I may have mentioned, I don't know if I did or not, that there were a group of female law students who had a sit-in at the Grant Grill in downtown San Diego, because the Grant Grill had always refused to serve women. It was a men-only facility. Lynn Schenk<sup>1</sup> was one of those students. Sheridan Eckert, who later became Sheridan Reed, and I think is still Judge Reed<sup>2</sup> was one of those students. Judge McConnell,<sup>3</sup> I think, was one of those students, and they had a sit-in. They changed that policy down there, and I've always given them credit for that. I for one thought it was stupid to have such a position.

The same thing with all of the litigation that has been spawned throughout the United States as to whether or not a facility is a private as opposed to a public facility and whether or not certain people can be excluded based on their ethnicity or based upon their sex. That whole business kind of disgusted me. Maybe it's because I don't join those places, and I don't really care about whether or not the person who is playing golf next door to me is of one sex or one race as opposed to another.

But I have to teach it. A lot of the stuff in the Remedies casebook deals with those kinds of things. You can't get away from those things. And as a professor, whether you're a new professor or an old professor, you have to find some way to deal with these topics without coming across as being biased in a certain way. I've always tried to be non-biased, but some of the stuff I see, to me it's just silly. Should so-and-so be allowed to be a Royal Order of the

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<sup>1</sup> Congresswoman for California District 49 1993 -1994

<sup>2</sup> San Diego Superior Court Judge 1981 – 2004

<sup>3</sup> Judith McConnell, Presiding Justice, California Court of Appeal, Fourth Appellate District, Division One 2003 - present

Caribou or Moose or whatever, which I always tell people, “I don’t know why anyone would ever want to be a moose or a caribou, and maybe this lawsuit was brought just because they felt like bringing a lawsuit to prove a point.”

RL: Let me ask you about another kind of change that has come about that’s kind of revolutionary in a different way during your time of teaching, and that is the introduction of computers. How did you welcome or not computers into your work life?

FE: Kristine Strachan finally shoved a computer down my throat and said I had to have one. I fought it. I said I didn’t need a computer, at least not for my work. I needed a casebook, a ballpoint pen, and a legal pad, and that’s all I needed. Of course, now that there is a room in our house which houses a computer—it used to be our son’s bedroom, but now we call it the computer room. Marci is probably in there right now.

I eventually came around to use the computer, but I’ve never used the computer as a research tool. To this day, I don’t like Lexis/Nexis™. I don’t like the whole set-up. If I’m going to try to look up something on the computer, I will look it up on Westlaw™, because I find it more friendly for me. I know quite often you can get something off of Lexis/Nexis you can’t get off of Westlaw. I used to have all these things on my home computer. They’re now gone. I would have to go through a procedure to download all this, but I’m not doing legal research right now anyway, and I find quite often, if I want to find some legal point, I can find it by going to some other search engine which is not dedicated ...

RL: Or you could call the law library.

FE: Yeah, like a law library, like books. I’ve always loved books. I found that those people who are people with whom I like to associate, they’re bright people, and those people read and have read in their lives plenty of books and still read books.

My son-in-law is almost a computer guru, and when he insisted that I have the computer here at home, I pointed to my research library, which is right next to my chair, and told him, “Usually, anything I want to find, I can find in one of these books.”

Even today, quite often, it's much easier for me to look in one of these books than it is to go to Google™ and to try to look up something. The other thing I found about the computer is that quite often, if a person's been dead for a while, let's say twenty, thirty years ago, before the advent of these huge search engines such as Google, that you won't find out much about them. The other day, just for curiosity's sake, I went to Google and put in "Leo Hermle," who was a brigadier general in the Marine Corps who used to teach part time at the University of San Diego, and about the only thing I found there was a, you'll get a kick out of this, an oral history which was taken some time back of some of the survivors of the campaign on the island of Tarawa in the Pacific Coast, and there was Brigadier General Leo Hermle.<sup>4</sup> But other things—no, you won't find that much.

There was a time in the development of the law school when computers got started where Mike Naven tried to convince all of us that we should all have a Kaypro,™ and I don't know if you've ever heard of Kaypro. Kaypro computers were, I think, manufactured up in the Carlsbad area,<sup>5</sup> and they were one of the earlier manufacturers of desktop computers.

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<sup>4</sup> The oral history is available on the National Park Service Web site at <http://www.nps.gov/wapa/indepth/extContent/usmc/pcn-190-003120-00/sec9.htm>.

<sup>5</sup> Kaypro began producing computers in 1982 in Solana Beach, CA.

## CONVERSATIONS IN LEGAL EDUCATION:

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

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Narrator: Professor Frank Engfelt

Interviewer: Ruth Levor

Recorder: Ruth Levor

Date: June 13, 2005

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TAPE 3b: SIDE A

RL: So Mike Naven wanted you to use a Kaypro computer.

FE: Yeah, everyone should buy one.

RL: At their own expense?

FE: Oh, yeah, and he had some kind of a deal at that time. I think, the only person I can recall that bought one was Sarah Velman, but Bill Velman, her husband, her then husband, was on the faculty, and he built his own computer. Back in those days, you could buy these kits and so forth. We had a student who taught a course in computers, which was attended by the faculty members. I recall that only two people finished that course, I and Ginny Shue. I think everyone else disappeared.

I also recall that when he asked in the first session if anyone had any questions, that I raised my hand, and I asked a question, which today I know was an unanswerable question, particularly with the student body he had, and I could tell why he had this look of dismay on his face, because my question was, "What is a computer program?" That's a hard question to answer. I can probably give an answer to that now, but I don't purport to be a computer wizard.

I have never had any objection to any of my students taping my classes, and clearly, I think that the laptop computer has made it much easier for students to take notes. It has also made it much easier for those who are bored to play solitaire or to play freestyle or to do something else, but again, one of the things I've always told them is, "I don't pay your tuition.

I'm not your mother. I'm not your father. I would guess you're here for a certain purpose. If you don't want to be here, then get out. If nothing else, do not be disruptive."

You will always have a certain percentage of students, you know this, who to a certain extent are almost like they're in kindergarten, who don't even like the idea of going to class. I can understand that, and again, getting back to teaching, I had teachers when I was in law school that I thought were wonderful. There was one student [*sic*] I still remember in Contracts class. His name was Ron Degnan. Degnan was one of the best teachers I've ever had. What you find out when you become one yourself, you tend to emulate these people. You try to be, not only like them, but better than they were.

Degnan liked to wander. He liked to get up close and personal, as they say on ABC, and stick his nose right in your face and ask you questions. I still remember the day when we piled up chairs in the middle aisle so that he couldn't get at us, and he got going, and he just nicely threw the chairs aside as if they weren't even there and didn't miss a beat.

RL: He was your professor at Utah, right?

FE: At Utah, yeah. He was half a year in Contracts, and for some reason, the second half was taught by Spencer Kimball, who ran for Congress and lost, and he was the one I talked about earlier that spent his time reading the Book of Mormon.

There were other professors there who were so boring and so bad that I made a point of not going to the class. You make up names for these people. I still remember A. LaRue Jensen, and we, of course, called him A. Latrine Jensen. He was one of those.

I remember we had a professor who was a former federal district judge, who years before had had a stroke, and he told very amusing stories, which were pre-stroke stories, but he really didn't know what page he was on in the casebook, and if you had a choice, you just didn't go to that class.

There were other people, Bob Simmons, who taught Property. I always referred to him as, oh, who was that comedian with the crewcut hair, George Gobel, Gobel, was that his name?

RL: George Gobel.

FE: Yeah, George Gobel, I said he was the George Gobel of the law school, even though Bob Simmons was at least a foot taller than George Gobel, but he had that same kind of humor. Bob would always balance his rear end on the back of a chair, and every once in a while, he would lose his balance, and he and the chair would both come crashing down.

Fred Emery was one of these professors who, he had a horrible facial tic, but after a while, you forgot it, because he was teaching. He was into this stuff. He loved it.

RL: He was a professor at USD?

FE: These are professors of mine that I remember, that I think I became sort of an amalgam of these people. I remember these people as being good and why they were good and what was good about them.

RL: I asked because when you said Bob Simmons, I was thinking of the man who had taught here at USD. This is a different Bob Simmons.

FE: Oh, no, different guy, yeah. And in spite of Fred Emery's awful facial tic, which was very distracting, after a while, you didn't see it. And believe it or not, he was teaching things like Income Tax and Estate Tax. I found myself actually fascinated with this kind of stuff. Fred Emery was the one who actually convinced me that I should take the fellowship at Chicago and teach, because he himself had been a Yale fellow, and it got him into teaching, and he thought I should do it.

So between him and the dean, actually, I had a free trip back East. I'd never been to Chicago, and I thought I'd take the free trip. I remember I saw the Museum of Science and Industry and got shown around. Insofar as the Chicago Tribune is concerned, when it published its list of top law schools, the University of Chicago is always number one. As far as other publications are concerned, Harvard is up there. It's number one. But it's one of, if not the, finest law schools in the United States, and as I said before, I missed seven subjects in law school that

were on the bar, and one of the things I did when I was teaching at the University of Chicago was to sit in on these classes.

One course I never took was Constitutional Law, and I sat in on a constitutional law course there that was taught by someone who was actually there and was a clerk at the time when *Brown versus Board of Education* was decided by the Supreme Court of the United States. It was also the highest score I got on the bar examination, by the way, Constitutional Law. I still remember in a *post mortem*, a very good friend of mine says, “Frank, you made up an amendment to the constitution which doesn’t exist.”

I said, “I guess you’re right, Judy.”

Then, when the scores came out, I said, “I guess that person that graded this liked my amendment.”

It was an exciting time for me, because here I’m a kid. I’m twenty-three years old. I’ve been told to teach a course to students who were at least my age if not older. I got to meet some very interesting people who, particularly the people who were on the common law fellowships from England and Ireland and Australia, etcetera. I got to sit in on faculty meetings. I had faculty status, and I got to hear these giants talk about a jury study that this one person had going on for the last ten years, and they wrote volumes of books, and they’re probably in our library, but I got to talk to these people and mingle with these people, occasionally play squash with these people.

Things were done right there. I mean, we had a faculty meeting in the faculty dining room, which was in a separate building where we were served luncheon, and we had linen napkins and, you know, silverware and fancy flatware and so forth. And of course, again, as a young guy that had just come East from a place like Salt Lake City, Utah, this was very impressive to me. I got to meet people like Archibald Cox,<sup>1</sup> who was part of Nixon’s slaughter, the night he fired all the people, and I think back on those times, and it doesn’t seem that long ago.

RL: What are the biggest changes that you think occurred in legal education as it affected you and your teaching over that time?

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<sup>1</sup> Watergate special prosecutor 1973

FE: As far as I personally am concerned, not much changed. If I were going to be criticized for anything, people would criticize me for not changing. I don't think, as far as teaching is concerned, certain thing should change.

Insofar as law school itself is concerned, the main changes have come about in trying to condense down into a course things that used to be taught by many courses, or at least several courses. The entire time that I was on phased retirement, I taught a course in Remedies. I taught Remedies before. When I first started teaching it, I think it was five hours, and then it went to four hours. Then it went to three hours, and I kept telling these people on the Curriculum Committee that when I went to law school, what we now call Remedies consisted of three separate courses. We had a course in Equity; we had a course in Restitution; and we had a course in Damages. And three times three, because each course was three units, was nine, and now we're supposed to be teaching this stuff in three. It's impossible to do, so you have to be, they say eclectic, you have to pick and choose as to what you think a thing should have to be taught and other things that you by necessity have to ignore, things that shouldn't be ignored, but there's nothing you can do about it. That's one of the changes.

You always have people, no matter what endeavor you may be in, who think change in and of itself is somehow good just because it's change. I haven't looked at the curriculum at USD for some time. I happened to get an e-mail the other day from the university, and most of the names I didn't even recognize, people who are on the faculty teaching there. I don't know who they are. I know that someone is always trying to stir up something. I call it "stirring the pot," and you know what's in the pot.

They want to change the curriculum. One of the things they've always wanted to do is to teach Constitutional Law in the first year, which I for one have thought is kind of ridiculous. I don't see teaching Constitutional Law in the first year. I still believe that certain things should be taught in the first year like Torts, Property, and Contracts, and Procedure, and after you get through with that, there's no time left for other things, and these other things should not be put on the back burner.

Some changes have been good. I was told early on in my career that I'm going to teach Criminal Law, and I got a casebook in criminal law, and I actually, now I'm looking back, wasted an awful lot of my time and the students' time in teaching from that criminal law

casebook and actually teaching those people the elements of common law crimes. When I was, I thought, “This is kind of stupid. Why should these students have to know the elements of the common law crime of burglary in the first degree and second degree or the difference between grand larceny and petty larceny when if you look at the California Criminal Code--and I had practiced some when I mainly defended accused, alleged, and most often actual felons--in California, we call it theft?”

We had different elements of the crime, and then the more I thought about it is that, the main thing that’s not only interesting but important in criminal law is not the crime, the elements of the crime. The accused is charged with violation of a certain section of the Penal Code. You want to find the elements of the crime, you’ve got to look it up. The important things are involved with criminal procedure. A lot of it is constitutional law: proper warnings given; was the search and seizure constitutional or not constitutional; what kind of motions can be made; and so forth and so on. I think that’s changed over the years. I’m hoping now that Criminal Law is taught differently, and even though they call it Criminal Law and Criminal Procedure, that what should be taught is the procedural aspects of criminal law.

There are a lot of thing that happen in law school which I think constitute a waste of time and things that necessarily bore students. The thing that I loved about law school when I went to law school was that I didn’t have to memorize anything. I had just been admitted to dental school, and I hated a course called Organic Chemistry, because I had to memorize all these formulas, just rote memory. Today, of course, it may be in my brain someplace, but I can’t locate it, but in law school, I felt, “Gee, this is great. I don’t have to memorize anything.”

Typically, in a class in the beginning or halfway through the course, I will wander through the classroom and pick up individual casebooks from students, and I will make comments which again are laughed at by others but not the person who is the object of the comment, “Isn’t this pretty? I’ve never seen such beautiful colors. This is a technicolor green you have here. It would appear here that every line in this case is important.”

Then I will say, “Do you want to see my casebook?”

“Well, no.”

And I’d show them my casebook. I’d say, “How many things do you see underlined in my casebook?”

“One.”

“Well, I’ve been teaching this stuff for many years, and isn’t it funny? I only found one line that I felt was something that should be underlined, and you’ve got pink and blue and fuchsia and mauve and all these wonderful colors, and isn’t that nice?”

I also tell them, “I know it’s a good deal to buy a used casebook, but don’t believe that just because the person has made it a colorful, beautiful thing that those things are necessarily important.”

Briefing cases—I don’t know if students still brief cases. I don’t know if you briefed cases when you were in law school. I did.

RL: Yes, we did.

FE: I was told that we had to brief cases. Most professors would call on you in class, and we had to stand up at attention, almost like you were in the Army, and give the brief of the case. You would give the title of the case. You’d give the name of the court. You’d give the date as to when it was decided, and you’d go through the facts, and you’d go through the reasoning, and blah-blah, blah-blah, blah-blah-blah, and then you’d finally come to what was in my book always R slash L, the rule of law.

I briefed everything for the first half year of my law school student career. Then I quit, and I started doing what was called book briefing, which I continued to do for the rest of my life. As a professor, I would book brief, and not brief, a case. When I first started teaching, I would bring a notebook into class, where I would have briefs of the cases so I could refer to those when I was teaching. I soon discovered that I was using the notebook as a prop for my casebook. I would prop up the casebook on top of the notebook, which stayed closed. I never opened it.

I still remember when a bunch of students came into my class, and they said, “We’re worried.”

And I said, “What are you worried about?”

“Everybody else has notebooks, and they bring those notebooks in and refer to them in class. You don’t bring in a notebook. You just bring in your casebook. What’s going on?”

I said, “You want notebooks?”

I pointed to my bookcase in my office. I said, “They’re all there. If it makes you feel better, I have briefed every case in that casebook. By now, I know those cases,” and I said, “I’m going to tell you something now which is really going to make you mad. I could go in there and teach that course to you people without even the casebook. That would really throw you into a tizzy!”

But they were very concerned because I didn’t bring my notebooks into class. I still have those notebooks. They may be stored, they are stored, in some of those boxes I showed you the other day in my woodturning shop. Insofar as the student is concerned, I would hope that you, I would not only brief the cases, I would type them out when I was a student, so they were, you know, legible and nice and pretty—waste of time! I spent so much time doing that.

But if you look at any of my casebooks, you’ll find I’ve got certain things underlined. I may have R/L, and typically, I may have question marks in the margin where something is said by the court which I find is not right or is questionable. That hasn’t changed with me, and I don’t think it should change with students.

One of the biggest pitfalls for a student is to spend too much time doing scut work, stuff that is not ..., making little cards and the night before the examination, going through the cards. I, when I was a student, depending upon the course sometimes, would not have attended one class. They didn’t take role, and I would end up reading the casebook for the first time the night before the examination. Of course, I didn’t get A’s in those courses, but I could glean enough out of that, and of course, we had courses that ... I wrote a law review article dealing with water law. I don’t know how many people ... I wrote a law review article as a student dealing with equitable liens. Believe me, equitable liens were much more important than what I wrote about water law, but of course, water law was a very important part of the law, particularly in the western states, and is going to continue to be important, because again, it’s a resource that too many people are using, and there’s not enough of it.

RL: You talked about the final exams. When you graded final exams, what were you looking for?

FE: I was looking for, and will always be looking for, whether or not the student, first of all, figured out what's it all about. I would tell the students in advance, "You're going to get an examination which will have a factual situation. Those facts should make you think about certain problems, or if you don't like the word 'problems,' certain issues. Deal with those issues. Make arguments about those issues. If you wish, make arguments on both sides, but always come to a conclusion.

"The typical examination that I will give will not call for, quote, a right conclusion, end of quote. I want you to be able to spot the issues, deal with those issues, discuss those issues in a logical, reasonable way, and come to a conclusion."

RL: Did you want them to cite cases that they had read?

FE: No! That's another thing I always told them, "I don't want you to cite cases. I know the cases. I don't have to read them in your bluebook. I don't care whether or not you remember cases. You are wasting my time and your time by citing cases. This is not something which is going to make me say, 'Whoo, doesn't this person know something!'

"I want to know whether or not you can think. I want to know whether or not you can deal with a problem."

Sometimes a real life problem—I mean, I made up, for instance, an examination question, and those examination questions used to be all on file in the library, most of which have been stolen. When I went up to the state of Washington, there were two bound volumes of my examination questions, which I found out somehow had made it up to the state of Washington, which meant that I had to make up brand new examinations, and I thought, "How easy it's going to be up here. I can just pick out an old examination."

But students are very adept at getting a hold of this information. But if I would go to the law library today and look up my examinations, they're supposed to be on file. They're probably not, because I'm not teaching there, but I used to go up there, and I'd find that most of them were missing. That presented a problem, because again, if you've been teaching the same subject for, say, forty years, the law hasn't changed that much. The issues haven't changed that much. You end up basically giving the same examination question over and over and over again, but the

characters change. The story is different, but the same issues are raised, and sometimes, I would make up some things that actually happened.

We had some very heavy rainfall here one year, and my neighbor's bank fell. It slipped into houses down below. Part of it went through the back of one house and out the front and took the entire house with it. Fortunately, no one was killed, but I made up an examination question about this occurrence. You know, I had surveyors in there and all different things. But again, you're still looking for certain basic issues.

As a former student, you know that the issue, quite often it's going to be, maybe it's going to be the pre-existing duty rule, which you may dredge up from your mind from when you were in first-year Contracts class. The question is always consideration. There might be a question, I typically didn't do this, but once in a while, I'd throw in something dealing with the statute of frauds, which again was something which never turned me on that much.

That's why I'd always get very excited about the UCC. When you mentioned Homer Kripke the other day, I know Homer was there for a few years but not too many years, and I inherited the UCC, and of course, he at the time and probably even today, is known as *the* expert on the Uniform Commercial Code. I don't like to be bound by a statute, because typically statutes are very poorly written. It's a very hard job to write a statute. Legislators give lawyers lots of business. Lawyers give lawyers lots of business. To a great extent, we feed on each other. I tell my students, "This case would not be in the casebook but for the fact that somebody screwed up, if a lawyer didn't do the job that should have been done for the client and now is in the casebook and now was appealed to the highest court in the state."

RL: My nemesis was always the parole evidence rule.

FE: Yeah, which is not a rule of evidence. It's a substantive rule of contract law.

RL: Right. That much I remember [laughter].

FE: It doesn't have a damn thing to do with evidence, alright? But what I found out at USD one time was, I've never been guilty of this, the Contracts professor who was teaching one of the

sections would tell the students, “The parole evidence rule is a rule of evidence,” and then the Evidence professor would say, “The parole evidence rule is a rule of substantive contract law,” and so the parole evidence rule was never taught at all. That’s not right.

## CONVERSATIONS IN LEGAL EDUCATION:

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

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Narrator: Professor Frank Engfelt (Marci Engfelt was also present)

Interviewer: Ruth Levor

Recorder: Ruth Levor

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TAPE 3b: SIDE B

FE: There are certain things you teach you really like. You and I have been talking about the parole evidence rule, but the thing I always liked was mutual mistake of fact and that wonderful cow, Rose the Second of Abalone, and the prop I always use when I'm teaching mutual mistake of fact in class is I will bring in a brand new book that has been sent to me by a law book publisher bound in cellophane. I will have a mock sale in class for this book. After the sale is completed, I will act like I'm opening this book, but I won't do it, because I have other sections to teach, see, so I don't want to destroy my cellophane, my prop, and I'll say, "Now, we open this up, and we look inside, and it's nothing but blank pages. By definition, a book is something which has something in it which you can read. There's nothing to read here. The thing that we thought existed does, in fact, not exist. That is mutual mistake of fact.

"Rose the Second of Abalone was bargained for as a sterile cow. Such a cow by that name did not, in fact, exist, just as this as a book does not exist. That's the simple explanation of mutual mistake of fact."

Too often, people, particularly professors, particularly those who think they are very scholarly, will have much more to say about it than that and will make it very, very confusing. I always tried, no matter what I was teaching, to make things as simple as possible for the class.

RL: And you say you taught this once to a group of faculty wives?

FE: Yeah, faculty wives and students' wives. Again, things have changed. We would have one night where we would invite all the wives up, and there would be a class taught by one of the

professors so that the wives, for the student wives, not faculty wives but student wives, to see what their husbands were quote going through, and I was quite often picked to be the one to put on the show, and I would usually read the poem about Rose the Second of Abalone and tell about how Rose finally gave birth and little trivia about Rose, that the seller told the agent to make sure that she was well watered before she was delivered to the buyer. What she meant was, “Fill her up with water,” because she was being sold by the pound, and these kinds of things.

Marci attended one of these sessions. She and her mother also attended a session I had in the federal district court involving at that time the largest amount of marijuana that had ever been seized by the feds. We had two hundred and twenty pounds of marijuana in the courtroom in mail carriers, you know, these things that are on wheels. I convinced the jury that my guy was nothing but a mule, which he was. He was paid a certain amount of money to get this stuff in the United States. The jury kind of agreed with me. The judge kind of agreed with me, but then the judge went home and changed his mind overnight, and even though he had promised me the day before he was going to give this guy a light sentence, and threw the book at him, unless he ‘fessed up to those who hired him.

Again, this was a time when I read the obituary of a person, and that’s one thing that’s nice about being dead—usually, the obituaries say nice stuff about you—and here was this man who had lied to me, not in open court but in his chambers, and had gone back on his word and sent my poor client to jail. You know, this guy, I think, had six or eight kids down in Tijuana or someplace, a nice guy. You remember him, my client? Yeah, nothing wrong with him.

I’m trying to think of the name of that judge. Anyway, it’s, again, a nuisance when you read an obituary, and you say, “That’s a bunch of pfft.”

I’m trying to think of the name of that judge. He was a probate court judge, and all these wonderful things were said about him, and the rumor around the entire bar association at the time was that he was taking money under the table, but that doesn’t come out in the obituary. It’s a good thing I don’t remember his name, because I might get sued by his estate for telling the truth.

RL: Well, we’ve had a pretty wide ranging set of discussions, ...

ME: Yes [laughter].

RL: ... and I just want to ask you before we have to wrap up if there are some memories that you have that somehow my questions didn't evoke, and you were dying to tell or had thought of that you'd like to add to this record.

FE: Not really, I think we've ..., God knows, I've talked an awful lot.

RL: That's the idea.

FE: I've lived through some very distressful times up there, particularly caused by a dean. There's no doubt in my mind that for the entire time I've been up there, the worst dean we've ever had was Kristine Strachan, and probably one of the worst memories I have, and that's not so much about Kristine Strachan. That's because of the university administration trying to stonewall for that woman. I don't know where she is right now, but I think she's out of the state of California. I just hope she stays there.

Sheldon Krantz, I guess, is happy doing what he's doing now. Last I heard, he was back East, but, you know, I enjoyed working with him. I, of course, have known a lot of people up there I've worked with. A lot of them are now dead. Some I liked very much. They were dear friends of mine. And other people who were up there and still are there I don't have much to do with, but I guess that's something that's going to occur no matter where you are. There are going to be people you like and people you don't like.

I don't know what effect the administration and the bureaucracy has on other people, but I have pretty much tried to stay away from it. I would imagine a person in your position—it's been impossible for you and Nancy to stay away from it, and I would guess it's distasteful.

RL: That was a difficult time for us, too.

FE: What I'm saying is that your times, no matter who's in charge, are probably going to cause more personal distress to you than might occur to a professor, particularly one such as I who, I feel, has earned it, for no other reason than that I've survived as long as I have, a certain

degree of immunity, where I can say to a dean, such as I said to the present dean, although he's no longer there, Dan, alright, "You and I will get along just fine. I promise not to bother you if you don't bother me. If we each leave each other alone, things will go along swimmingly," and he has ...

ME: He's left you alone.

FE: ... left me alone. How he's worked out with the rest of the ..., I don't know, because on January second two thousand and three, things came to a screeching halt for me. That's about it.

RL: Well, I think I can add that I talked to some people who actually have been your students, and they were very excited that I was coming to interview you. I know you've said that some students have loved you, and some have not been amused, but the ones that I happened to speak to were in the former category, and so I came here with high hopes, and I haven't been disappointed at all. It's been really a pleasure to talk to you.

FE: Well, I can honestly say that, if you had been a student of mine, you would have been amused. You would have had a good time, and you probably would have done pretty well on the final examination, maybe very well on the final examination, because you are interested in things. Too many law students are not interested in things. I mentioned the other day that they don't read anymore, and you try to educate them a little bit, not about the law but about other things, simple things such as our English language. They not only don't know. The thing that is so aggravating to me is they don't care, and that's what really gets to me. They don't care that they don't know.

RL: Well, there are always those one or two gems in the midst of that, I think, who make it all worthwhile.

FE: That's true. That's true, and you look for more than one or two. It's nice to be sitting in your office, and somebody knocks on the door, and you say, "Come in," and someone says, "I am so-and-so--do you remember me?," and I say, "I certainly do remember you," and they say,

“I’m now a judge in Colorado, and I was in your Contracts class in nineteen seventy-two,” or whatever.

That does make it worthwhile.

RL: That’s a great note to end on [laughter].