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## Conversations in Legal Education: C. Hugh Friedman, October 27, 2005

C. Hugh Friedman

*University of San Diego School of Law*

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### Digital USD Citation

Friedman, C. Hugh, "Conversations in Legal Education: C. Hugh Friedman, October 27, 2005" (2005).  
*Conversations in Legal Education*. 21.

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University of San Diego

*Legal Research Center*

## 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 C. Hugh Friedman

Interviewer: Ruth Levor

Recorder: Ruth Levor

Date: October 27, 2005

Accession No: OH-LRC-Friedman-2005-3a

TAPE 3a: SIDE A

RL: This is an interview of Professor Hugh Friedman 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 University of San Diego Legal Research Center on October 27, 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.

Thank you for returning again a third time and giving us of your time once more to talk about your reminiscences. I thought we'd start today by talking about the classrooms themselves and the students when you first started teaching. I think we had talked about the fact that you were actually teaching across the street first. Is that correct?

CHF: That's my best memory of it. The classrooms were Quonset huts at the University High across the way, across the canyon, across Friars Road, or not Friars...

RL: Uh, Linda Vista.

CHF: Linda Vista Road, sorry. My best specific memory of teaching the earliest was over here in More Hall. That was Constitutional Law. It was a third-year course, perhaps even a fourth-year course. It was a four-year curriculum in those days, so it was for students who had already been around and taken the first couple of years anyway of law school. As I mentioned, I was using my old law school notes from Stanford for Constitutional Law, updated as best I could. The students were fairly mature. I think I mentioned that earlier. They were almost to a person, I

should say to a man, because there were very few women in those days, coming from other careers, and so they were older. I think probably I was the youngest person in the room in those early years. They had been engineers or were still engineers. They were in the military. Some were taking retirement. They'd been in real estate, various careers, a doctor now and then, an M.D., and so they were more willing to engage. They had more confidence, self-confidence, more life experience in talking and debating and making their thinking known and articulating their thoughts. What they lacked in time to prepare I think was offset greatly, if not fully, by their willingness to engage and their maturity.

The classrooms—I don't remember much about the Quonset hut, but I do remember that when we came in to More Hall, all the classrooms had crucifixes on the walls. It was a very Catholic place and proudly so. I think I mentioned the policy was we began each class with a prayer, and those who were Catholic recited, I guess, a Catholic prayer, I wasn't there, but in my own class, I didn't want to recite any of the prayers I had learned, so I simply said, "We'll start each class with a moment of reverent silence, hoping we'll clear our thinking, clear our minds, and get some help from the powers above." [laughter]

Something like that, I mean I tried to make it comfortable for everyone, and that was good. It gave me a chance to think about how I would launch, and it gave them a chance to settle in quietly and get their attention.

The classes were very mannerly. The students, almost all of them came from work. They were used to dressing. Coats and ties was the order of the day in those days, and that was fine with me, because I was rushing from downtown practice in a coat and tie. You've probably seen early pictures where they're all in the library and other and other places, in classrooms. They're in a coat and tie, or at least a tie. Sometimes, it was very warm. We didn't have air conditioning in those days. We would say, "Gentlemen can take their coats off."

And I remember when there were occasions when there was a woman in class. I'd say, "Oh, you can take your coat off, or that's about all I can suggest [laughter], sweater, whatever."

I recall early on it was up to the instructors—I don't think there was any policy about standing when you recited, but I do recall when I started teaching first year classes, I would ask them to stand. There were no computers then, so there was no screen to hide. You could hear most of the students. They weren't mumbling behind a barrier as today frequently occurs.

I remember these days fondly. I've always had a fondness for the night classes for a lot of reasons. They were small classes and since they were at night, usually there was only one in the evening, so when you ended the class, it was the end of the time for them, and many of their wives were picking them up—one-car families in those days largely, hadn't gotten to two-car plus—and sometimes those who did have their own cars or who were carpooling would hang around and chat. Frequently, I and I'm sure some of the other of my colleagues would say, "You want to go down and have a beer?"

There was a place down at the foot of the hill, no longer there but it was on...

RL: Was it at the corner of Napa and Linda Vista or further down the hill?

CHF: It was right across from the Padre Trail Inn.

RL: Oh, okay, over by Taylor Street.

CHF: Exactly, on Taylor Street, and it had a good parking lot, and it was just a little place with pizza and beer and peanut shells, inexpensive. You could buy a couple of pitchers of beer, and I would do that sometimes for those who cared to come down. It didn't occur to me that that might be dangerous if they left inebriated. In those days, it didn't occur to us, but it was a way to get acquainted. They would ask about practice. They just pumped me for all it was worth, as I recall, and I enjoyed that. I was happy to share.

In those days, the part time faculty included, well, it consisted almost exclusively in the first year I taught of part timers who were practicing full time downtown. It was Paul Peterson, Charles Froehlich, John Roche, who later became a federal judge--Froehlich, of course, became a state court judge and justice—and Stacy Sullivan joined us. He represented the Chargers among others, and so he was a figure of interest to the students. As I mentioned, I represented the Padres, so that was of interest to them.

I recall suggesting Jim Mulvaney to teach. He was a very popular teacher of Evidence, and he had a wonderful gift of Irish humor and would lace his lectures with wonderful stories.

You could hear the laughter across the hall if you were teaching opposite him. He was a good teacher, popular.

RL: You mentioned that the classes were small. Do you think about a dozen or two dozen?

CHF: No, my first classes that I recall would have been the fall of nineteen fifty-eight. The school began in fifty-four. I was teaching in the fourth year. They had graduated their first class of something like eight or twelve in June of fifty-eight, and I remember I had come here in May, and because I had been hired right away, I was invited to attend the graduation, but I didn't get there. I didn't go, as I recall. I don't remember going.

I started teaching then in September or August, so they had graduated their first class. The class I taught, Constitutional Law, as I say, there had been some attrition because they were third- or fourth-year students, and I think there were maybe twenty, twenty-five. That's my estimation.

RL: The group that would remain and go down to chat, about how many?

CHF: Oh, five or six or eight, less than half certainly. I'm recalling, I think the first classroom I remember vividly was in More Hall, and it would be considered 1A now, I believe, or 2A—2A—on the main floor past the dean's office, which was always there, and just past the dean's office where Carrie [Wilson] is and all of the others, registrar, records, that was little faculty offices, and then there was a, as I recall, there was then, as there is now, some kind of mail room or office, and then what is now 2A, I guess it would be, as you enter the building on your left...

RL: I think yes.

CHF: And 2B is across the way, across the hall.

RL: That's right.

CHF: So 2A was not tiered. It was smaller. There may have even been two classrooms, because it's been substantially opened up, and it faces a different way, but then, there was a little lectern, and it was a long narrow room.

RL: I've seen some pictures where where the professor sat was a little raised and had a rail around it.

CHF: A metal railing, and you'd step up, and that was your little dais or raised platform with a metal railing. It was a couple of steps and then the lectern. And it was a long narrow room, not terribly long, but it would hold maybe thirty, forty students.

RL: I see. I've been trying to determine from pictures—do you recall whether outside the classroom, was there actually a parking lot there at that time, or was that a field?

CHF: No, there was a parking lot.

RL: There was a parking lot, okay, at the time.

CHF: And on the other side of it, where now is Guadalupe Hall, was an amphitheater.

RL: Yes.

CHF: And that's where they had graduation in the earliest years, and there was no bookstore to speak of or Guadalupe Hall. I don't remember there being a field. There was always a parking lot.

RL: Well, I'm looking at some black-and-white pictures, and it's hard to determine, because while it's not aerial, they're certainly from far away, so that you can't really tell, so that's good to know. I know that at that time parking would not have been the problem that it became.

CHF: It was not a problem. Our names were lettered on the curb in front of our spot right alongside the law school. As a matter of fact, my parking spot now has still got the old lettering of the name Friedman, and it's just coincidence, because for years, we've been assigned reserved parking wherever, but I kept saying to the parking office, "If this spot ever opens up, I'd love to get it."

And it did. Eventually, it opened up, and I was next in line, so they put me in it. The last couple of years now I've been in it. It's right next to the building. It's right next to where the yellow zone is for the unloading.

RL: Okay, so you can still see your name.

CHF: Oh, yes, and you can still see a number of those names.

RL: I see. I'll have to go and look at that.

CHF: You can see Engfelt, Kelleher, and Friedman is right there [chuckle].

RL: Oh, I'm going to go take a picture of that.

CHF: It's kind of fun. And we had our own assigned spots.

RL: Right, and you didn't pay for them. Nobody paid in those days.

CHF: Nobody paid. No, that's true.

And then, we talked about the library before. It came over from across the street at University High. It was not much of a library, but they had ordered an awful lot more when they knew they were getting the third floor of what was then More Hall. So it became where the students would study.

RL: Was it always domed, as the courtroom is now?

CHF: No, no, that was an addition, as I recall. I don't recall it being domed.

RL: I don't see that in the pictures either.

CHF: No, that was added, I think. Now whether that was an authentic replica of the original Supreme Court, whether it was domed that way, I don't know, but my memory is that was when I first noticed it, when they remodeled.

RL: Yes, I just came across a picture, and the picture is probably in the later seventies, and it is captioned "Supreme Court courtroom," and I'm in the process of trying to find out whether that's tongue-in-cheek, and that's the new Grace Courtroom or not, so I'm not sure either.

CHF: Well, we didn't have a courtroom up there until the Grace Courtroom was built.

RL: Right, but in this student newspaper, which as we had discussed, had started to become more humorous...

CHF: Proactive.

RL: ...and proactive and tongue-in-cheek, the caption that I see says "Supreme Court courtroom," but it may be that it's actually the new Grace Courtroom. I haven't had a chance to read the article yet, so we'll see.

CHF: Well, I think that the point is that this was designed to be after the original Supreme Court courtroom, the U.S. Supreme Court.

RL: And that you do recall.

CHF: Oh, yes, I do recall. That was what I understood was the architect's intention or the school's intention was to replicate closely but not in great detail. Obviously, I think in scale it was much smaller than whatever was known of the original U.S. Supreme Court, the courtroom itself.

RL: Right. So when you first came, you had this more formal recitation, and the students were very engaging, and then, as time moved forward, did you find that the atmosphere in the classroom changed? We had talked about that a little bit.

CHF: Yes, I did. Even though I was still teaching mostly at night, well, entirely at night except occasionally filling in for somebody who was ill on the full time faculty. Every now and then, I'd pinch hit. So presumably, they were the same kind of students, coming from work or older, more life experience, in point of fact, that wasn't necessarily true any longer. The night program, there were still a good percentage of them that were that, but many of them were those who couldn't quite meet the stats to get into the full time day program but took the night but were still full time students. They were able to devote more time to it, and many of them younger. They were right out of college. Whether it was the changing mores of the times, the culture changes, in many respects, the students no longer had quite the drive, focus, determination to make the most of the two hours or hour and a half or whatever in the classroom. I had the feeling that increasingly a number of them were, you know, not really prepared and not even willing to track and stay with the discussion and try and get into it.

Then of course, as we talked earlier, at some point in the tumultuous seventies, end of the sixties, seventies, they, I think, showed a lot less respect for what they were doing, for our efforts as faculty members. Maybe that's unfair, but they didn't seem to have the same degree of, outward display of attentiveness.

RL: Did it ever get to the level of a student being confrontational in the classroom?

CHF: I don't recall that, and I would not have minded that if it had been on point, I mean, if it had been taking me to task for something I had editorialized about. I think the closest it came

was when students would debate with each other, and I felt I was succeeding, because sometimes I would try mightily to get students to be point and counterpoint to elucidate what the ramifications of an issue were and what the differing viewpoints might be. Sometimes, students would get kind of hot at each other, but I have a feeling that much of that was play acting. It was just staged for effect to impress their fellow students, and that's fine. No, I don't remember anything terribly confrontational.

RL: When you started teaching, and you're teaching in the night school, and you're using your notes from your own Con Law classes, did you also use the Socratic method?

CHF: Well, yes, to some extent. It was always a modified Socratic, and I've varied that quite a bit over the years, depending on the class and the subject that I was teaching. I've always thought that the Socratic method, at least as modified, a dose of it, can make an hour class or a fifty-minute class, or particularly if you go an hour and fifteen minutes or something, livelier than just lecture and just occasional questions and answers.

RL: In the early days, you had upper-class students. Were they well-prepared to engage in the Socratic method? Were they expecting the Socratic method? It was probably no longer new to them.

CHF: I think they had had some experience in it in the earlier years from other instructors. We didn't, as a faculty, get together much. We were all very busy with our own full-time pursuits, and there wasn't much discussion of pedagogy in those days, especially in the earliest years when we are all part-time.

As the full-time faculty came along, we were always invited to faculty meetings, and I used to go whenever I could in the early days, but they were at lunch time, and it's hard to get from downtown up to the hill. I used to try to talk to some of the full-time faculty that were teaching in the areas that I had taught or was going to be asked to teach or that I wanted to teach someday. I became well-acquainted with a number of them, and I recall having conversations about how do you teach it. Do you use Socratic?

It seemed to me that most of them did not. Bert Lazerow has always, I think, used a heavy dose of Socratic. Students used to complain. “Balls in the air,” they called him.

He’d throw these questions out and let them float up there and never really give a resolution, and I said, “Well, maybe there isn’t one. Maybe that’s for you to pick and choose and debate.”

Anyway, I think Gene Reynolds used to try that, which is not easy in Corporate Law particularly. I believe that Hickman did some of that. Some of the more popular teachers, though, were just lecturers. They lectured with a lot of humor—Lou Kerig, as I mentioned Mulvaney, part-time, when he was there briefly, others. I don’t mean by omission to suggest the others weren’t ...

It was a pretty good group. I don’t think students ever complained about the quality or level of instruction they got. I’ve never heard complaints about that, ever. Over forty-seven, -eight years, I’ve never heard complaints about that. The complaints and problems, and happily it faded into the deep, dark recesses of the past, were the way the administration treated some of them, mostly during that Father McManus era when there was such pressure to get accreditations and so forth.

RL: You were talking about people who used humor, and I’ve come across the name of someone I’ve never met, and that is Bill Wang. Can you tell me a little about him? He seems like a very engaging fellow.

CHF: Bill is Chinese, as is his wife. He was teaching Corporations, and that’s all he wanted to teach. That was his area of interest, and so they let him teach two sessions each semester of Corporations, so he was teaching, I think, four courses [chuckle] in a year, I think that’s fair to say.

RL: And were you not teaching Corps at that time?

CHF: No, no, I taught Business Planning at night, and when I joined the faculty full-time, Bill still co-opted all the Corporations courses, so I taught Torts, a first-year course. I like first-year—I always enjoy that. I taught various things plus Business Planning at least one semester a year.

Bill was a very funny fellow, great sense of humor. He wrote out all of his lectures, and he delivered them as if they weren't written, but when I did finally start teaching Corporations because he left to go to Hastings—he wanted the big city—he gave me his notes. They're very funny. He starts out by saying, "My name is Bill Wang [pronounced 'wong'], W-A-N-G. 'Wang is 'wong.' 'Wong' is 'wight.'" [laughter]

You see what I mean?

RL: I do, I get it.

CHF: I remember that, and that was the kind of thing he would do. It was very cute humor, and it was always clean. It was just very clever.

He developed a newsletter. He was doing it, I don't know if he was doing it previously. I think he may have started his teaching here, but I could be wrong. He developed a newsletter, sort of a potpourri of everything going on—little handy hints; the quickest way and the best way to get to the stadium; if you want a pizza, the best pizza is at so-and-so; second best is so-and-so. He had his own little review of movie theaters and which are noisy. He just had all kinds of information, and he put this thing out every now and then. This was before computers. He sent it around. He was a very funny guy. He still is, I'm sure.

RL: He's still at Hastings. I looked him up on the Web site, and I believe from what I read that at some point, he actually published a compendium of some of what you're talking about.

CHF: I wouldn't be surprised. I know he went to San Francisco, and he did it there at Hastings. That would be a wonderful city in which to do it. There's so much going on.

RL: How about you? Do you have, perhaps in relation to the subject matter of the courses you taught or whatever, any favorite stories or anecdotes or cases that you like to dwell on in class to sort of generate interest and break the ice?

CHF: In both corporations and in Business Planning, the two main courses for the last ten, fifteen years that I've taught, I've always begun both of them the way I think businesses start, and that is to say, the way a lawyer ordinarily would first encounter a business issue. Corporations or other forms of business don't spring full-blown into an opinion in a casebook. They're the result of usually two or more people, sometimes it's one person forming an enterprise, but usually it's two or more people forming a business together, and so it's a deal. They've gone and negotiated an understanding and an agreement about who will own what; who will have what say; who will do what for the business; who will get what out of it. I try to start both courses in that frame. I usually have a hypo of some sort that I hand out before class and ask them to look at it, and I raise some questions.

One question is: What is the role of the attorney in assisting these two or three people—usually I have two or three people in the hypo—in forming an enterprise together, conjoining in business? How does the lawyer perform that role? What are the steps, an orderly kind of checklist for the lawyer to undertake to discuss with these clients? I always begin with the ethical considerations: Can the lawyer represent two or three people together? The usual fallacy is, they'll say, "Well, he's representing the business."

But the business doesn't exist yet. So it goes from there, and it's a good beginning to test how much they understand about finances. I usually give a little financial statement. Usually, one of the parties has a business already, a proprietorship, and needs more money, and another one comes along and says, "I'll put money in, and I'll also put some services in."

You just take it from there.



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TAPE 3a: SIDE B

CHF: And talk about the initial client interview for a business client, not only the ethical considerations of whom you can represent and can you represent multiple parties in the formation of a business, but then what are the points on which they yet must agree that they probably haven't even considered—so they haven't reached agreement if they haven't considered it. How do you raise these points and get them to agree? I try to emphasize that the planning or transactional lawyer challenge is to facilitate an agreement. You don't want them to walk out or blow up. You try to find the areas where they can reach common ground.

It's a tightrope—it's a delicate thing because if you're representing two or more people, you're dividing your loyalty, and a lawyer is supposed to give undivided loyalty to his or her client. Yet by definition, two or more people forming a business may have differing interests, different objectives, and your job is to harmonize those or help them see that they can be harmonized in a way that they're willing or will agree. It's a challenge, but it's exciting, and I try to convey some of the excitement of doing that, for a decent fee, and doing something worthwhile.

RL: Do you raise in their minds the concept that perhaps there should be more than one attorney representing ...?

CHF: Oh, yes, I ask them about that, "Well, what do you think about sending, if it's A, B, and C who have come to form a venture, what do you think about sending one of them to another lawyer and another one to another lawyer, and you keep which one of them?"

And they say, “Well, gee, this is a small business. Can they afford three different lawyers?”

And I say, “Well, is it just a question of cost? Can you see any other impediments that having two or three lawyers might present?”

“Well, yes, there are egos that get involved, different advice they ...”

I say, “Well, what do you think the chances are that within a one-week period you could get all three lawyers to clear their calendars to even talk by phone about this to get the deal moving?”

And then they begin to see why the law permits multiple representation by one lawyer.

RL: So you’re taking a much more practical approach.

CHF: Oh, that’s all I can offer. The dimension I felt I could offer from the get-go, all of us as part-timers were in full practice, and so we were not much into theory. By that I mean pure theory. We were into the theory and rationale of the rules, how they developed, what their policy underlying them was, or policies, but we weren’t trying to theorize or develop theoretical constructs for collections of rules and that sort of thing that is much in focus in modern scholarship, or certainly, we weren’t bringing that into the classroom.

We felt that these students wanted to be lawyers, most of them, and our job was to help prepare them to do that, not to prepare them to be law professors or intellectual scholars of the law, but lawyers, perhaps judges. I felt that the practical, how you apply it, how it works in the real world, in law practice, dimension is something that I could contribute. As the faculty has changed its character, and there are fewer and fewer faculty members who have practiced at all or have practiced much, I felt it more and more important that that’s a dimension I can contribute.

I hope I can contribute it with enough excitement so that it doesn’t, in contrast to an awful lot of wonderful theoretical stuff that’s going on, which is exciting, but I leave that to others. So I’ve always tried to teach, and I’ve asked students when we come to a good case, “Anytime you read an opinion, ask yourself if you were walking out of the courtroom after the judge had handed down this opinion, and you have heard him or her read it out loud, and you’re walking out of the courtroom with your arm around your client—pick a client, the plaintiff, the

defendant, I don't care who—but suppose they look up at you or down at you and say, 'What does this tell us we should have done differently? How could we have avoided this outcome, or what did we do right, but how could we have prevented this lawsuit, having to endure this?'

“Ask yourself, ‘What is it that this case teaches about practice and the future? Can you learn anything from it other than this is the rule of law of the case and so forth?’”

So I've tried to be as practical as I can.

RL: Well, I have to say that, as a former law student at a very fine law school, I am listening to you and mentally salivating, because I think that what you're focusing on was really the difficult part of transitioning from being a law student with reasonably good grades and then trying to practice law. We didn't get a lot of that, and I think it would have been very helpful.

CHF: Well, I hope it's helpful. I know I've had students thank me later from the bar on. They sometimes will call me and say, “We had a corporations question on the bar. Did you see the last bar exam? You were just right on my shoulder. That was exactly what we had talked about in one of your classes.”

I'd say, “Oh, my God, thank heaven. I'm glad if that made you feel comfortable.”

And then, later on, in practice sometimes. I feel what I'm doing is useful. I'm not saying that every faculty member should do that. Obviously, diversity is important, diversity of approach. And I'm not saying that my colleagues who teach in the courses I teach don't do some of that. I think they do, but I would bet I do a lot more of it, because to me, as I said, with my background, I thought that's something I distinctly have to contribute, forty plus years of practicing and having written what I wrote, which is practice-oriented.

RL: Now, having written what you wrote, we in the library, in addition to carrying your materials, carry a lot of form books, and I know at least from the years that I practiced, which is also pretty ubiquitous, computers, that they were very helpful. What's your attitude towards even telling the students that these types of things exist and can be used in practice, for example, that there are checklists like the one that you ...

CHF: Oh, I use them in my class, in Business Planning. I encourage them to use not only my forms that are in my book but other forms. I even mention some of the ones I think are better, but I also try to teach them about the cautions needed in using anybody's form, in slavishly following it. I mean, you've got to adapt forms, make sure it fits, word for word, paragraph for paragraph. I think training in how to use forms is important, even if it's only a few minutes of it.

I mention the availability of forms in the areas in which I teach. They're indispensable. Why reinvent the wheel when there is a form, but make sure that you just don't slap it in. Look at it; read it; make sure it fits. You're usually cutting and pasting, even with computers.

RL: Particularly now with computers. I think that would be a good warning to give the students.

You mentioned that you enjoy teaching first-year students. Are there some differences, palpable differences, in the classroom for a professor between standing in front of a first-year class and standing before an upper class?

CHF: I think so. I think there's a palpable difference in teaching a first-year course from the first day, the first hour, and the last day and the last hour of that class at the end of the year or semester or whatever. I mean, when they first come in, they're scared. They're not sure what they're going to encounter. They've heard all kinds and manner of stories. They've maybe seen some movies, TV shows about law school. They've heard from others what to expect, maybe even about you, the professor.

The first class or two I would say generally I sense that they're more intimidated. There are always a few that are willing to engage from the beginning, which is great, and again, I would think particularly those who are more self-confident. Sometimes, you get students who just from the get-go want to, I won't say dominate, but are too eager maybe in terms of the rest of the class. But that wears off, and I think by the second and third year, fourth year at night, they become as passive if not apathetic as ...

RL: ... or exhausted ...

CHF: ... or exhausted, just worn out, in relation to what they were in the first year. First year, you get them, they're fresh, they're eager, they want to prove themselves to themselves and to others, see what they can do. After the first-year grades are in, they begin to settle down and pretty much know, I think, where they are, where they rank, what they need to do, what they don't need to do. They have a better handle on it, you know, it's an evolving thing. Also, they begin to get diverted into other very worthy activities, moot court, law journal, public interest law, other things.

RL: In your classes, are your grades always based on a final exam, or are there any classes that you give papers?

CHF: My Business Planning course has always been a paper course. I let them pick a project that involves a series of corporate issues that are real. I mean, they are hypothetical, but they could be based on something they've experienced. I've had students develop a more or less realistic family business project or a proposed law firm project—what should they be, a corporation, a limited liability firm, or just stay a partnership, those kinds of things, and those are paper courses. I review outlines, and then I grade the final product. They usually have extensive documentation, using forms. You know, sometimes they're that thick [gesturing], but it's a product they're usually happy to have when they've finished it. They can show it to prospective employers. They have it as a portable file, and while I don't return their papers, I encourage them to keep a copy and then come in and see what my critique has been after the grades are out.

The Corporations has always been an exam. Occasionally, I've done midterms, both voluntary and at the time when we mandated midterms, I gave them. It's always based on an exam.

RL: Picking your colleagues' brains as far as pedagogy goes in the early years, are there any ways that your approach to the classroom, to teaching the materials, has changed over the years?

CHF: I think so. First of all, I've always been open to considering and being influenced by my peers. If I see a good idea, something that I think would improve what I'm doing, I'll take it and

adapt it as my own as long as it's not theft [chuckle] or with attribution. In other words, I've always enjoyed visiting, sitting in, auditing, if you will, a class or two from time to time from those who are considered really stars in the classroom. Herb Peterfreund was one. I caught a couple of his classes, and we used to get him once in a while to give a lecture to the faculty about how he approaches teaching and what he tries to achieve.

Much of it is a cult of personality though. Much of it has to do with just what you are and how you project yourself. I mean, some people can project the same words and the same statements, and it'll fall flat; other can do it, and it's a riot. Lou Kerig was a good friend, and I liked how he taught, particularly International Law. He was very dynamic, but you can't emulate, you can't copy, you've got to be what you are. We all know that. But you can pick up pointers here and there.

As far as teaching Corporations is concerned, I don't think I've consciously emulated anyone who teaches my subject or Business Planning for that matter. It's sort of how I approach it, what I want to convey. Part of what I try to do in the business courses, which is where I've concentrated now for some time, is project what a business lawyer is as a member of the profession. So I try to dress that way, I try to indicate wherever I can how I would deal with clients on this question or what I would advise them or, as I've indicated, I try to in every which way apply the theory, the case law, the decisional matters, all of that, to some kind of a realistic factual situation or narrative where they can see how it plays out in real life, how a lawyer would use it.

That's something I just learned myself in practice. I'm interested in the pedagogical aspects, and frankly, the first time I ever had a chance to really explore what I wanted to do and how I might do it was the year that Lynn was a White House fellow in Washington. When I finished my term as Bar President here, the county bar presidency, in December—she had gone in August to Washington—through Bert and others here and Don Weckstein, I was able to land a full-time visitorship in Business Law, called Business Associations. It was basically the Corporations course, BA one and BA two, and I taught those at American University in Washington, D. C., and that full immersion with a lot of time on my hands, and a lot of it snowbound or at least weather-bound back there during the winter—I went back at the end of December, and I stayed actually until the following August when we came back here. That's

when I accepted a full-time position here, because I had found that full-time teaching so gratifying.

That was when I had a chance to really think about how to present it more effectively for me. That was an exciting time. I came here, and the first few years I was still fine tuning it. I don't think I've perfected it. You never do. I find more and more I'm asking myself how can I change or adapt or evolve, and my difficulty is, and I think I mentioned this earlier, my difficulty is I don't find I have the current de rigueur references or points of reference to today's modern youth that I used to have. I used to be able to have that even though I was getting older in my forties and fifties, because I was a musician. I played in music, and I just kind of felt that still had a little bit of a handle on the vernacular, the ethos of young people that were the age of law students, but I don't any longer feel that I have that much I can relate to.

It's not that I disdain it. I mean, it's perfectly valid. I mean, heck, their interests today are no different than when it was jazz for us, but I don't understand those interests. I mean, rap, everything from just below the breast down to the hips being bared and all kinds of body piercing, and that's just an outward manifestation, but the thinking—I don't feel confident that I can reach them anymore at their level and appeal using what is their way of communicating to get what I think they need to learn across, and that makes me less secure. So that means I'm beginning to think about phasing out, because you know, if you don't feel that you're really getting it across as effectively as you might, maybe it's time for some younger ...

I've talked to some of my younger colleagues, and they don't seem to have any better handle on it than I do [laughter], even though there's a lot of years between us, separating us, so maybe nobody does. Maybe you've got to be really young. Do you understand?

RL: I can totally relate to what you're saying, and the thought that crossed my mind is you know that when even your kids aren't hip, that that divide has really grown. I think one of the techniques that I use that I can stay more current with is to talk about sports with them. You know, you can always watch a football or baseball game on TV.

CHF: Well, that I can do. I can talk about the World Series. I have some interesting anecdotes, particularly with baseball. Yes, that's one thing you can do.

RL: Right, but I totally understand.

CHF: But the movies—I used to sprinkle my comments, it would just pop into my head. I would be talking about something, and I'd remember something about a movie. One of my favorites is "My Cousin Vinny." Some point, talking about something, and I'd say, "So what are you going to say to the judge, you know, what are you going to say to the judge when you haven't read the cases—you've only read a couple of outlines, and they weren't of this case, because not all cases have been outlined by Gilbert's—what are you going to say? 'Well, geez, youts, your honor.'" "

And I used to get a good response. Now, very few students have even seen that movie. They don't even remember it.

RL: Well, we have it in the collection, so you can refer them to it.

CHF: Anyway, that's just by way of example.

RL: I think that's a very good example.

You know, in the earlier days, when the classes were smaller and things were more personal, I'm wondering if there were students that you got to know possibly better than today that you might still remember or even, in some cases, maybe even still have contact with.

CHF: Oh, sure, sure. In the earliest days, I got to know a number of the students quite well. Many of them became judges or senior partners in their own firms, and we've remained friends and in contact. Many of them honored me on my fortieth. They got together without my knowing about it and put together a nice event and an endowed scholarship.

There are some I've gotten to know. I try to make an effort to get to know a few students each year that seem receptive. I remember Denise Hickey, who's now, I believe, the president of our alumni association. She was a fine student, and I stayed in touch with her while she went into a corporate career. I haven't seen her recently, but occasionally, I'll run into her at various events.

Many of the students come out, and they stay here, and they get very involved in the Lawyers Club, if they're women or occasionally men as well, or they get involved in the County Bar Association, and I've always had a great fondness for both of those organizations. I think being active in the profession in one or both of those and other outlying professional organizations is very important to be a professional, a rounded professional. There's a lot of mutual support.

There are a number of students like that. I remember Bob Baxley. He was an older student. He'd been a lifeguard; he'd been a diver. He came to law school at night. From the get-go, he was a bull in a china shop. He was very outspoken and very determined and knew it all, very bright. If I ever had a confrontation with a student, it was with Bax.

I was teaching a course I'd been asked to teach, because we'd been slipping on our bar results. I was familiar with the bar exam process, and so I was asked if I would put together a course. I only did it one semester. It was called Legal Writing and Analysis, but it was really a bar prep, and Baxley was in it. What I did was I handed out a whole bunch of old bar questions, and it was a good review for them substantively. Of course, I made sure it was only for courses that they'd already had. We'd just woodshed, "blackboard" I called it, outline appropriate answers to these bar questions.

He would take me on regularly, "Why are you doing that? Why would you discuss that there? Why wouldn't you discuss it here?"

He was a perfect foil, but the way he did it, it was challenging, and students would say, "Gee, what's he doing?"

They thought I'd slap him down. I didn't. I thought it was wonderful. I'd say, "Well, Mr. Baxley, let me ask you this. If you address that here, then ..."

RL: ... what are you going to do later on?

CHF: "... and does that move you ahead? Because you want to keep moving. It's a crossroads, and if you don't see the crossroads, then you're going to go down the wrong path."

We remained good friends. He went on the bench eventually. And a whole bunch of them—Jerry McMahon, I've mentioned a number of the students.

Since I've had my endowed scholarship, by the way, I've had the privilege of helping select the recipients. They're in their third year, their last semester. They've demonstrated an interest in and an ability in business law courses, and so they get this scholarship, and I take them to lunch usually, and then, I try to stay in touch. Some of them are good enough, some haven't kept in touch, but I like to see how they're doing.

RL: Why don't we just review how that came about and who put that together, the whole endowed scholarship.

CHF: All I can say is what I've come to understand. I wasn't privy to the beginnings, but apparently, a couple of alums, Sandy Kahn, whose father and I used to be good friends, and Jerry McMahon and—forgive me that I'm not remembering, but I understand at least one other alum, it'll come to me—got together somehow and said, “Hugh's got a fortieth anniversary teaching, and maybe we ought to mark the occasion.”

I wasn't there, but the way it came to me was I got a call from Sandy Kahn, who said that Jerry McMahon will be calling you. He's on the Board of Visitors, or chairing the board, I think he might have been chairing the Board of Visitors, and they're really trying to figure out what their mission should be, and they know that you started it. I was in a full-time practice, and Don Weckstein had said, “Let's have a Board of Visitors. Would you help me?”

And I said, “Sure.”

So I helped put it together, and I chaired it for the first couple of years

“Would you be willing to meet for lunch with Jerry and somebody. He'll be giving you a call.”

I said, “Well, sure, of course.”

So then the next thing I knew, McMahon called and said, “Would you meet with us?”

And I said, “Sure, I'm happy to do whatever I can for the school.”

So we met up in McMahon's office right before noon on a given day. Sandy was there, and somebody else was there.

RL: We're going to look that up and put it in a footnote.<sup>1</sup>

CHF: You will. And I believe they said, "We got you here under false pretenses. Bert told us that you're going to"—this is what Jerry said—"you're coming on forty or forty-one years of teaching, and we think that's an important achievement, and it should not go unmarked. And so what we'd like to do is put together something that would be appropriate, and we thought we should do it in consultation with you rather than just do it in the blind. We're not sure what you would like."

I think he mentioned scholarship; he mentioned some kind of program, some kind of additional perk for me at the school. I guess they'd talked to Grant Morris, who was then acting dean. It was during one of Grant's interim deanships.

I said, "Well, I'd like to talk with Grant about it, but I think it ought to be something for the school."

First of all, of course, I was flabbergasted. I thanked them, and I said, "It's wonderful you want to do this, but I think it ought to be something the school needs most, and I'm not sure what that is. I think it's scholarship funds. We're always looking to help financially really good students, whether minority or not, but I mean to try and recruit them, get them here, as competing with the universities, you know, cheaper tuition, and we're woefully underendowed, so I'd like to talk to the dean about it."

I said, "I don't want anything for myself. I'm fine [chuckle]."

So they said, "Why don't you let us know."

We had a nice lunch, and I talked to Grant. The next thing I knew, they were putting together a party, a dinner, and they announced an endowed scholarship. Grant and I kind of brainstormed. He said, "Yes, third year would be great, because that would relieve the pressure for first year and second year if we can take students who have been on scholarship ..."

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<sup>1</sup> The planners for the party and scholarship in honor of Hugh Friedman's fortieth anniversary at the School of Law included Robert Adelizzi, Sandy Kahn, and Peter Hughes. *See* Outline of Remarks for Reception for Hugh Friedman, 11/05/1998.



## 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 C. Hugh Friedman

Interviewer: Ruth Levor

Recorder: Ruth Levor

Date: October 27, 2005

Accession No: OH-LRC-Friedman-2005-3b

TAPE 3b: SIDE A

CHF: "... if we could provide scholarship funds in the third year, that would free up funds for more first-year and second-year."

Actually, I just said, "Why don't we make it a scholarship in Business Law for the student or students who show demonstrated ability and interest in Business Law."

At that time, American Corporate Counsel Association, ACCA, had a very active San Diego chapter, and the president of that was at that time a friend of mine. I knew him well. He said they were talking about contributing some funds to a corporate counsel kind of scholarship, both here and at I think he mentioned Cal Western, and he knew about what they were doing in my name, and so he said, "Why don't we just coattail it and then we'll contribute, and as long as we get recognition that we're contributing part of it."

I said, "Fine, if it's all right with the school."

So we worked that out. Now in point of fact, we advertised it that way and named it that way, and I even consulted with him. I remember he came to the first two years of lunches where I hosted the recipients, but I've just learned from Carl Eging that in point of fact, not a penny was ever received from ACCA. I think it was not deliberate. I think it was just a volunteer organization that something slipped through the cracks. So unless they want to come in for sure and pay for it, we're going to drop them out of the description.

The school wanted to name it the C. Hugh Friedman Endowed Scholarship, and I said, "That's great."

Lynn and I contributed a fair amount to it and continue to. So that's how it happened. It was a wonderful affair. It was well-turned out. It was in the rotunda of our school here, our

building and then followed by a smaller dinner over at the faculty dining room. I think that was the first year Dan was here. I remember, Dan, that was when he had made his debut, that year.

RL: Right, well, that would make sense, that Grant was interim dean between Kristine and Dan.

CHF: For setting it up, and then, when it was actually announced and the hoopla, that Dan had come on board.

RL: I remember an affair earlier than that where your group came and played, and was it on Coronado Island?

CHF: Well, when Kristine was dean, she always had—I don't know whether it was a welcome party or an end-of-year party, but she always had a party out on the Coronado Quays in the clubhouse there where she lived for faculty and administration, and she would always ask me if I'd put together a little group, and I always did. I was happy to do it. I underwrote it. I was happy to play, and if I ever had to pay anybody, it was just the piano player, who was a ringer.

There was an event where I brought in the Rancho Bernardo group, the Septuagenarians I call them. I can't remember what that was, but that was faculty and administration.

I guess we don't play the right kind of music, although we play the same kind of music that they've been hiring lately, but I think she likes this group, and she pays them well.

RL: Back to the classroom—I wonder whether in the classes that you taught you ever had any evidence or had to deal with students being highly competitive with one another.

CHF: I've never encountered what I would call unhealthy competitiveness. One of the projects I do regularly in Business Planning is I ask the students, usually twenty or fewer, sometimes more—in earlier years I've had as many as forty in Business Planning, but I try to keep it to twenty, because it is a paper course. I ask the students to self-form, two or three, a little mini law firm, and I give them assignments, projects to plan. It's the same project for all these groups, and

then I ask them to present their respective recommendation or recommended plan and have the class critique it, and then I critique it as the rest of the class does.

So you'll have five, six, seven, maybe eight plans. It's the same facts, same situation, but it proves a number of things. It proves that no matter how much I've tried to ask them to assume the same players, the same facts, the same goals, the same objectives, they're going to read it differently, and they're going to hear their client differently and imagine different things are being said. Secondly, that it's not monolithic, corporate planning. They're going to end up with six, eight, ten different plans. Some will have a lot in common, but they'll be different. There won't be any two identical.

Sometimes, they get pretty competitive about, defensive about, "Well, I think my plan ..."

I never evaluate them about as to this is a better plan and that is a better plan. I just try to highlight the merits and demerits, the weaknesses and strengths of each plan to prove that there is no perfect plan. There always are consequences, and some are not as desirable as others, but it's up to the clients to decide what they can live with, whether they're willing to pay a little more, have more exposure on the tax side, but accomplish this or that.

Sometimes, students seem not to take some of the criticism terribly well. I mean, they get very caught up in their own plan and its merits, but that's passing.

RL: How large are the virtual law firms that they form? Is it two or three students?

CHF: Two or three. I insist that they have at least one other, two of them to talk about it and develop the plan, and three is a maximum.

RL: How would they be graded?

CHF: I don't grade those. I tell them they won't complete the course if they don't do the project and submit the outline with the names of the three on them, but if one person has done all the work ... I have them come up, all three, and I try to sort of ask questions of all three to see if they have all—you know, subtly. Usually, they work together, although sometimes you can tell

one student really wanted to go this way, and the other one wanted to go that way. I think that's good; I mean, that's fine.

RL: You're giving them that experience.

CHF: Right, exactly.

RL: And if they can take constructive criticism, they learn from it, and if they can't, then their colleagues learn that about them as well.

CHF: I don't think I've had too much negative on it. Most of the feedback has been very positive. They like that.

RL: It sounds like a great project.

CHF: But I haven't encountered the kind of competitiveness ... Maybe there is such in law review. Maybe there is on exams that I'm not aware of.

RL: Now, here we're required to use a grading curve, and you've seen the ebb and flow of that. How did it start out? When you first started, was there a grading curve from the get-go, do you recall?

CHF: I don't recall a curve as such. I recall that McManus, I mentioned earlier, early on in his pursuit of accreditation and particularly bar success, would urge us to flunk more out in the final year. He didn't want to forgo the tuition earlier but get rid of them if we don't think they can pass the bar.

That wasn't a curve. Most of us just graded based on what we felt was satisfactory work. There were always occasionally students that got Ds, and I've flunked students over the years, not many, but they had to really do a pretty poor job in my view to flunk, especially if they'd

been attending class regularly and showing some effort. That's pretty harsh, but still, there have been those.

But there was no curve that I recall. Then, when the curve came in, it seemed not too draconian. It seemed reasonably friendly. I have sometimes missed the curve, and I've written a note saying why. I usually am a little higher than the average, and sometimes I've had more lumped in the C than you're supposed to or a few more B and A, you know, that kind of thing, but it's been close enough so that it ...

RL: You've never been called on the carpet.

CHF: You know, I find I've graded so many exams over the years that I pretty well know what, in my view, particularly in light of what I've asked, what the questions are, I pretty well know what is an A, a B, a C, and a D, or by number, whatever—What's a ninety-three, what's a ninety. Now, we've changed again.

I can grade ninety-five exams, blue books, and then if I add them all up and divide, I find, by God, there I am, you know, I'm at eighty-one or at seventy-nine or seventy-nine point four. If I look and see how many As and Bs and Cs and Ds, I'm close. Sometimes I'm right on. So it just happens that way, and I don't really curve it other than in my head.

RL: We've talked a couple of times about the fact that there were few women in the beginning, and then, more and more women began to come to law school. Did you sense any change in the dynamics of the classroom as that occurred?

CHF: Yes. More and more of the more outspoken students were women, and for that, I am sure my colleagues were grateful. Even in business courses, and I've often had occasion over the years to say something to some female student during a break or something who's just performed well or just volunteered—I try to get volunteers—or if I called on them, and she responded well. If I caught her during the break, I would just say, "You know, I'm glad you responded so well."

Many times they have said, or sometimes they have said to me, I've heard it quite a few times, "You know, I didn't think I was going to like this course. I don't have any business

background. Nobody in my family is in business, but I'm really enjoying it. I'm thinking I might enjoy practicing in this field."

And I say, "Well, that's a high compliment. I take it as such. That was what I'd hoped for."

It's interesting that a number of the women have been willing to say that they really had come in not expecting to like it or to be comfortable and finding it something that stimulates them.

RL: Were you aware among the faculty or the students of any resistance to the growing number of female law students?

CHF: I don't recall any faculty discussion that was resistant to that. We'd get reports every year what the statistics are and the growing numbers, but I think we were just in the ebb, the flow, I should say, the progression that was happening everywhere in American legal education or maybe international legal education, more and more women.

RL: Now, after you had taught here for about a decade, the first woman was hired on the faculty, and that was Sarah Velman, whom as I shared with you, I've been interviewing.

CHF: She wasn't hired until sixty-eight?

RL: Sixty-five. Oh, that's right, ...

CHF: Okay, well, eight years.

RL: Right, I'm thinking of the beginning of the law school, so not a decade. She and her husband came on in sixty-five or were hired in sixty-five. Was there any splash about that, about hiring a woman or hiring a married couple, or was it just very matter-of-fact?

CHF: I don't recall any such discussions. There may have been among the full-time faculty, but I was still adjunct then, and if I was attending any faculty meetings, I don't recall and conversations about it.

RL: That's great.

At any time was there any militancy, either about gender or about ethnicity or about the political situation of the world that manifested itself at the law school or in the classroom?

CHF: I don't personally recall any. Lynn has shared some experiences that she had with me with Dean Sinclitico, who was a large emotional, almost larger than life, emotional Italian, very bright educator, but he was a tough guy, and she had some experiences with him that if you end up interviewing alums, you might want to interview her on that. There was unpleasantness. It had to do with the Jewish holidays; it had to do with exams on the Jewish holidays, the holiest day of the year, Yom Kippur, things like that, as I recall, and it was unpleasant. Clearly, if I had known about it at the time, I would like to think, although I was still an adjunct, many of us would have weighed in.

You know, the school was not interested in accommodating every religion and every holiday, and it was a Catholic institution, so that was the battleground. You mentioned causes, and I think that, as I mentioned, in the earliest days, I've heard stories from Lynn and her other two female classmates about how some of the professors were quite outspoken. Why were these women taking the place of men who had to provide eventually, if not now, for a wife and children in a career, to take these seats, these precious seats? [laughter] I'm paraphrasing but that was the bad old days.

RL: Ah, the bad old days.

CHF: So there was always that. I don't know that there is anymore of that. I've not heard that in so long now.

RL: I certainly hope not.

CHF: Well, let's hope so.

RL: I haven't either. I've experienced it, but I haven't heard it recently, so let's hope not. You mentioned a couple of names of colleagues—Peterfreund and Kerig—and I just wonder if you could talk about them a little bit.

CHF: Well, I didn't know Herb Peterfreund that well personally. He had come from, I think, NYU or somewhere in the east, but he had a reputation as a very fine classroom teacher who was much admired, maybe beloved, by his students who took his courses, and he taught Evidence, as I recall, which is a fun course to teach. I've never taught it; I've bar reviewed it in those early days, but it's fun to teach.

I did sit in on a couple of his classes because I'd heard so many good things about his classroom teaching, and he did teach with a flair. It wasn't a dramatic flair. He sat. He didn't stand; he didn't pace. Kerig was dynamic and was walking back and forth on the platform and getting students very on edge but in a challenging, stimulating way. Peterfreund sat there, but he had a nice mellifluous voice, and he just had a lot of humor.

Kerig I got to know quite well, because he was very active with student sports. He loved sports. He had the student-faculty softball team, and he loved the horses, and he loved nightclubbing, and he used to bicycle all the way from La Jolla, where he lived, down to the beach, where I lived, and where I lived with Lynn the first year that we were married.

RL: Which beach?

CHF: South Mission Beach. We'd run into Lou bicycling down there, and we became very friendly with him and with Ronnie, his widow. She was, I think, in the library here, or no, she was in the administration somewhere as an assistant to somebody. I think that's how they met.

RL: I didn't know that.

Lou wasn't his real name, is that right?

CHF: Well, it was Louis Kerig, I think.

RL: It was Louis.

CHF: I thought it was Lou, Louis.

RL: Okay, I thought I came across a name in the Woolsack, something like d-v-a-n.

CHF: Oh, Dwan—Dwan Lou Kerig, I think that was his name, d-w-a-n.

RL: D-w, maybe, okay, but he was known to everyone as Lou.

CHF: He was Lou. He loved students. He just had them hanging on him.

RL: What did he teach?

CHF: Well, he taught International, and he taught Evidence, as I recall.

I will mention another colleague who died very early of a brain tumor. His name was John Winters. Have you heard of him?

RL: Yes, I have.

CHF: As a matter of fact, John's sister, no, his wife, I think, was Sally Furay's sister. I could be wrong.

RL: There's some relationship there, yes.

CHF: She's a lovely lady, and she's worked, I think, in the university, his widow.

RL: I think that's right.

CHF: He was just a very special kind of guy. I mean, he was just a lovely guy. This was during the period of touchy-feely, that era, and he would go with students to sessions of, I don't know if it was EST or what it was, where they would, you know, try to get closer in touch with who they were, with each other. He was so conscientious in class. He taught Torts, and he just tried so mightily every which way to help students understand difficult concepts like proximate causation and the different issues of negligence liability. He was just wonderful that way.

I was very fond of him, too. When I decided to consider full-time teaching and accept Weckstein's and the faculty's offer, I talked to Kerig, and I talked to Winters. Those are the two I asked about what it was like, did they think I would enjoy it, and my recollection is they both encouraged me and said that, you know, if I'd enjoyed the part-time teaching, I certainly would enjoy the luxury of having time to think much more about what I was going to present in class and about what I wanted to write about.