



# **Stewart Macaulay**

**2016**

**Oral History Interview**

**Interviewed by: Troy Reeves**

**Interviewed at: University of Wisconsin,  
Madison Law School Library**



BEGIN TRANSCRIPT

REEVES: I have to hit this one twice. Today is April 8, 2016. This is the first interview with Stewart Macaulay. We are here inside the law school library, and my name is Troy Reeves. I'm with the UW Madison Archives. Stewart to help me test the sound quality, can you say your name and spell your last name?

MACAULAY: Stewart Macaulay, M-A-C-A-U-L-A-Y.

REEVES: Okay. I think we're going to be good. We're just going to slide this [00:00:30] book a little closer to you. We had a brief discussion before we turned on the recorder about where we were going to start. I think we decided we're going to start with Stanford Law School. I guess maybe the question to build to that is; why choose to go to law school?

MACAULAY: It was sort of a default thing to do. I was looking for something I might have some [00:01:00] facility at and I looked through various kinds of majors and things. My father's experiences of business executive did not make that route look particularly ... He had a wonderful job with General Motors all through the depression, but hated it with a passion. It was great, when other people were out of work he had this wonderful job. It never left me with the thought that doing what he did, didn't look [00:01:30] that good and so forth.

I was looking through something I might be good at, I had been involved in all kinds of things; acting, I ran a sports radio show no less. I had the fantasies that I was going to try lawsuits, defend the poor and the innocents and all those kind of thing. Those are [00:02:00] fantasies, and I guess we were all young once or something.

REEVES: In one of the documents, you gave me a wealth of documents that helped me, didn't your father take you to trials?

MACAULAY: Yes. Of course the funny thing was, he had an idea that you would be going to trials, you'd be watching lawyers and so forth and so. Law school, of course in those days was quite the opposite. They put you in a little bubble and [00:02:30] it was the science of law. You were learning how to deal with legal concepts, and statutes, and cases and this kind of thing.

You had three years of reading an incredible number of appellate cases. It was a very strange experience. We're much more "Get them out and have clinical programs" now. After all, I'm a member of the Stanford Law School class of 1955, which is almost prehistoric times.

REEVES: [00:03:00] Stanford wasn't much of a commute for you, because you were living in-?

MACAULAY: It's southern California, and clearly I was a west coast person. If you had asked me the day I walked out of the Stanford Law School, "Where are you going to practice law?" I'd say "Here", meaning California some place. That was the way things were set up.

REEVES: [00:03:30] We had a discussion about the fact that law school is a little different than other graduate programs in the sense that you didn't necessarily have a major professor.

MACAULAY: That's right.

REEVES: Were there professors that influenced you? If so, how?

MACAULAY: Yes. I took the required two contracts courses from Harold Shepherd. I didn't know at the time what he was doing, I didn't understand. [00:04:00] First of all, it was my favorite of my first year law school courses. I got my A's in it and law school grades people, it's quite a race against your other students. The fact that I finished third in my class at the end of the first year, that's a big deal.

I liked Shepherd's courses. The other thing he did was, I now look back on, at the time [00:04:30] I didn't realize; he handed out reprints of an article called "The Firm Offer Puzzle" by Franklin Schultz. It's probably the first empirical study of practices of people affected by contract law. This just wasn't what people were doing, it was a very unusual kind of document, and he had given us this.

He also wrote an article during the time I was there [00:05:00] called "Contracts in a Prosperity Year". He went and looked and cataloged them, and all of the appellate opinions in probably 1952 or 1953. What comes up? What are the problems? Where are they? He started asking that. That was just way out of bounds for what law professors did and this sort of thing. At least this was in the background.

[00:05:30] The other professor I took a course in the first year from and then I became his research assistant, this was Keith Mann. Keith was a labor lawyer and had been at Wisconsin. There were three people teaching labor law ahead of him, so he wasn't going to get to teach the course here. Also, it doesn't snow at Stanford and they pay a little more money, so [00:06:00] he had left Wisconsin and gone to Stanford. I was his research assistant.

This turned out, he then became Associate Dean. He got a telephone call from Judge William Denman, Chief Judge of the United States Court of Appeals for the 9th Circuit. He always got his law clerks from Berkeley. His law clerk got drafted, we had a war in Korea going on at [00:06:30] this time. He was looking for a law clerk and he called Stanford to see if they had anyone. Keith knew me and suggested me for the job.

I went, interviewed, got the job. Took the California bar exam, passed that. My wife and small daughter and I were off to San Francisco. A year of intense one on one [00:07:00] work and it was very much trial and error. I was supposed to write what were called the Calendar Memorandum, it was a first draft of the opinion of the 9th Circuit. I had to deal with every argument the lawyers made and I had to check them out, make sure that they had cited statutes correctly, read the cases, do all this kind of thing.

Then [00:07:30] I would go into the judge and he would say, "And now the appellate's case." This was the person that wanted to overturn the trial court, I would state it to him and he would pepper me with objections and things like this. He had many, many years experience as a lawyer and he just, "This doesn't sound right." If it didn't sound right to him, it probably wasn't right.

We had that, and then when we get to the end [00:08:00] of doing the appellate side, he would say, "And now the respondent." I would state the other side of the case, and he would pepper me with the arguments I had just given him. Over the time I learned to write a Judge Denman opinion. That doesn't say I always get them that way, but my batting average got better and better because I learned the way he wanted it done. He wrote his own opinions but he had one of mine to work off of [00:08:30] you see. It speeded the process up.

He was a wonderful man. We named our younger son, is Phillip Denman Macaulay, named after him. Famous for two big cases where he'd write World War II is on, and the Japanese relocation is going on, and he issued an order saying it showed cause, that how could we do that. It [00:09:00] got batted down very rapidly, but he got a lot of negative publicity for standing up. History proved him right.

Then there was a death penalty case involving the defendant named Caryl Chessman. He just worked on that and he got another hearing. It was a famous kind of case. [00:09:30] He was kind of the judge I dreamed of. You go through and you kind of idealize what this role is and so forth, well he was pretty close to it. I'd seen plenty of them that I don't idealize to put it mildly.

REEVES: Can I ask you a question about that, and maybe go back to another question about Stanford?

MACAULAY: Sure.

REEVES: How prepared did your [00:10:00] work, your law school training at Stanford prepare you for what this judge thing put upon you?

MACAULAY: I'd say pretty well. What we did though was go from a learning and taking classes and taking examinations, to having to do it over and over, under pressure. Oh, the time pressure was something. You had to get these things out. Having to confront the judge who was [00:10:30] going to confront me and my errors and things, he would spot them, and do these kinds of things. I had a general and then very focused. Oh, it was a wonderful experience in terms of learning. Now again remember, I had passed or I had done very well at Stanford Law School.

I passed the California Bar Exam. I'd done an awful lot of things [00:11:00] before I walked in the judge's door. Then it was really polishing it up. Really, not making mistakes. Really being able to anticipate things that ... You just get a feeling for [inaudible 00:11:15] for doing it. Now again, this is legal analysis we're talking about. Can you be a lawyer and make plausible legal arguments on the basis of a case?

REEVES: Right. [00:11:30] How stressful was that, maybe the first time, or was it always stressful?

MACAULAY: It was always stressful. Simply, I made a horrible mistake and I went to him immediately, pointed it out, and he had written a draft of an opinion that had been circulated to the other judges, which he had to withdraw because of my error. He handled it very well, but oh my, I felt [00:12:00] just terrible. You simply had this flow of things coming in and it's interesting, I was married and had a small daughter who completely off the point footnote, happens to be a professor in the Department of Linguistics here and I understand you know her husband and such, my son-in-law.

With that point, she was a very little girl and he [00:12:30] wanted to make sure that I didn't ignore them and that I spent time with them. There just weren't enough hours in the week to do all this. It was the kind of thing, as soon as you were done with one week's worth, the next weeks were piling up.

REEVES: You've mentioned your wife and your daughter a couple of times, so I want to back up to Stanford and ask, I think I know from the documents you gave me, but I want you to maybe talk about meeting [00:13:00] your wife, where you met her.

MACAULAY: Well, I went to a Southern California Junior College, so we would have money enough for me to go to Stanford. I remember by today's standards, it didn't cost anything. By our standards at the time, it was a very expensive place to go. I went to a junior college. I transferred in in the summer. It was on the quarter system at Stanford. I transferred in the summer quarter. I had dated [00:13:30] a woman and she was very, very popular and so forth. I went to a dance for transfer students, which this woman had been one of the organizers of. She was there. As I came up to her, she said, "Oh Stewart. I'm not your type, but my roommate is."

Jackie [00:14:00] had transferred from the University of Arizona, which she found ... She got the highest grades of any woman in the freshman's woman's dorm. Now we have to go back to a world where genders are segregated in university. To have a date with a woman, you check her out and she checks back in. This is by today's standards, this is all very primitive and so forth. The idea was it was a mixer, so [00:14:30] you were supposed to meet lots of young women and dance with lots of women. The two of us broke the rules because I don't know why, we just started talking and we talked to each other the whole darn dance instead of going and seeing other people. Well, two years later we were married and so forth. I did meet her quite that way.

She of course, and this is going to become part of my story, is she was from Racine, Wisconsin. [00:15:00] At that point, I had a vague notion that Wisconsin, it's somewhere near Minnesota was. I had lived in Detroit as a little boy up until when I was 10 years old, which you don't have much of a view of it. I had seen snow. My father was always very eager to get back to California where he had started off his career and we moved back.

REEVES: [00:15:30] Is there anything else, and there's probably a lot you could say about Stanford and Stanford Law, but is there anything else you want to say about that before we continue to move forward?

MACAULAY: No, I think we better move on because I just don't think. It was an intense experience. Very, very stressful. Stanford was, you were on a quarter system. In the first [00:16:00] year, classes could end at the end of the first quarter or it could be first and second quarter, beginning of second and third quarter. It could be any mix that suited them. No exams were given until June and then you had exams every other day. In fact, and no practice exams. It would have been a violation of the honor code to have an old exam and so forth. They used the law [00:16:30] school's famous, look to your left, look to your right. One of you will not be here next year.

Then they took us from the first year classroom and showed us the second year classroom. One-third smaller. It was in bricks and mortar that they were going to do this and they did. You had no idea. My wife always teased me because I was very much, "I hope I pass." [00:17:00] Finishing third in the class was pretty good. I honestly had no idea how I would do.

REEVES: Well, obviously pretty well.

MACAULAY: Well, I did pretty well or I wouldn't be here.

REEVES: I do want to ask having only visited, but never lived there, living in San Francisco for the limited time that you did, your thoughts and memories about that city.

MACAULAY: Oh, wonderful. [00:17:30] Now, we didn't have any money. This was one of the things we discovered is what they paid law clerks, once we paid our rent and all the rest, we were always right at the margins and so forth. San Francisco turned out to be a wonderful place to be without money. The views, the museums that were free, and I can still remember holding a little girl on my shoulder patting her, so she wouldn't cry, wandering through museums, [00:18:00] and things of this sort.

Now, we traded babysitting with a couple that lived down the hall from us in an apartment in the Marina District that today, it would be a very expensive place, but we did this. We saw the San Francisco Symphony. We saw Dave Brubeck at a jazz club. We knew every cheap restaurant [00:18:30] and so it was a wonderful time and that kind of thing. It was temporary. You're a judge's law clerk for a year, you've got a one year lease, maybe I'd get a job in a law firm here.

Again, part of the story I guess is that with Keith [Mann 00:18:53] who keeps coming into the thing, he telephoned me when I was working at Judge [Denman's 00:19:00] [00:19:00] chambers, and he said, "Edward Levi, Dean of the University of Chicago Law School is here. He's looking for Bigelow Teaching Fellows." I said, "Keith. What is a Bigelow Teaching Fellow?" He said, "Don't ask. You want the job." He knew I had always toyed with the idea of going into teaching and that it would be a terrific springboard kind of thing where if you were

interested in teaching, [00:19:30] was the point. We decided to put off getting a real job, meaning, being a corporate lawyer for another year and go see the Midwest and the rest.

REEVES: I know you want to talk about that, but you mentioned something that I know is a part of your life from some of the titles of some of the things you wrote, and that's music.

MACAULAY: Oh, yes. Oh, [00:20:00] yes.

REEVES: You mentioned Brubeck.

MACAULAY: Yeah.

REEVES: -so then you mentioned Brubeck. What sort of things are you and your wife or you listening to in terms of music at this point in your life? [crosstalk 00:20:10]?

MACAULAY: We've got two things. Jackie's mother was a piano teacher. Jackie loved Chopin and Beethoven piano music. And she was the one who introduced [00:20:30] me to Vivaldi, which today doesn't seem like that's pop music of the classical type. But I'll assure you in the early 1950s it's wow. We hadn't heard such a thing.

Jackie and I were all into listening to then modern composers. Now they're pretty old but ... Bartok, Stravinsky, Hindemith, Prokofiev and so [00:21:00] on. This was a big thing that was quite important to us that way. My other love was Big Band Jazz and I still have an obscene number of Duke Ellington CD's. That's a love and that kind of thing.

And I brought her around. I still remember one of the better things I did was I took her out and we were in Los Angeles and this was before we were married [00:21:30] and I took her to a jazz club and we listened to Billie Holiday. And Billie Holiday was one of these people who would be angry and stalk off if she was in a bad mood and the audience wasn't responding to her. This was a night she wanted to sing and she was hot. And I discovered my birthday is the same day as Billie Holiday's birthday, so that's-

REEVES: [crosstalk 00:21:54] your birthday was [crosstalk 00:21:55]?

MACAULAY: Yesterday.

REEVES: Okay. All right. Happy birthday. You share a birthday with [00:22:00] my brother-in-law. Actually my only brother-in-law but he is my favorite brother-in-law.

MACAULAY: Good. Good.

REEVES: And we may come back to music because I know it continues to play a part in your life-

MACAULAY: Oh sure.

REEVES: -and sometimes plays a part in how you title the things that you write.

MACAULAY: Right.

REEVES: So we are now at University of Chicago and before we turned the recorder on you mentioned that this was important for us to have a discussion about this time in your life to-

MACAULAY: Well, it's important because Stanford was a very good law school. [00:22:30] Chicago was a much more scholarly law school. I mean, you have Karl Llewellyn on the faculty who is about as famous a law professor as ever lived. His wife, Soia Mentschikoff is the great pioneering woman, first woman to be a partner at a Wall Street law firm. There are plenty of people, lots of discrimination against women being lawyers, so she was one of the great [00:23:00] pioneers.

Max Reinstein, a refugee from Hitler, but the great translator and commentator on Max Weber. I mean you just name all kinds of things. And at the University of Chicago at this point, there are two big projects going on funded by Ford Foundation and other foundations. One is the Jury Project and the other is the Arbitration Project.

And again, this is expanding [00:23:30] what law is all about. You see this is the thought that ... At Stanford, we wouldn't ... Well, they'd say, "Well they're juries." But actually studying what they do? No, that wasn't law. And then there was this whole idea of arbitration, which is ... There are kinds of arbitration but at least some of it is getting somebody who is an expert and isn't [00:24:00] deciding necessarily according to the rules.

How does that fit? Well, Stanford doesn't tell you much about arbitration. Here it was being studied and these things. Nick Katzenbach had just come to Chicago from Yale and I was a teaching fellow. Most of the teaching fellows did legal writing, working on papers the students had filed and going through it sort of. I did some of that, but I got assigned [00:24:30] essentially to be someplace between a research assistant and a very junior co-author on Katzenbach's project.

What he wanted to study was the role of lawyers playing with titles like Counsel to the Governor or the Chief Counsel of This Committee of the Illinois Legislature. So many of these people were the kind of negotiators back ... This was lawyers working [00:25:00] backstage. The key phone call at the right point and so forth.

And this is a big piece of what lawyers do. In a sense, they get the role because they could make trouble and go to court. But then backstage, they know the right people. There are a couple of them that are famous, now we go back in time really pre-computers and all, and the platinum rolodex, 'I have everybody, the key peoples phone [00:25:30] numbers and they will return my telephone calls because I am so connected'.

It's this kind of a role. And so I was sent off to the libraries to see what people knew about it and of course the key to the role is confidentiality. I mean, we're cutting deals backstage that we don't really want have people know about. So, it wasn't well studied. We thought we had a terrific research [00:26:00] project and we talked about how in the world you would study it

and Nick said something I've always remembered and that is, "You don't need a social scientist, you need a spy."

Maybe now the word CIA agent might be who you'd ... To get backstage, to really see, because it's supposed to be confidential. But what he'd done for me, you see, is starting to open up. There are things out there to study other than what you'll find in the appellate cases and in the statute [00:26:30] books.

Yeah. I had some of that at Stanford. My experience in the 9th Circuit mostly was statutes and cases but you know, I had to go from the Court of Appeals down to the District Court floor. Court of Appeals, top floor. District Courts the next floor down, because the law library was down there.

And then you wait to get out of the law library while this long line of men in orange jumpsuits chained together were being led [00:27:00] into court. My criminal law class didn't make the world that vivid to me. And you know these people were going to get maybe five minutes in court, because they're all going to plead guilty.

These things were pushing in on me, more and more aware but might of made a big jump at this stage yet. So I had Nick. Turned out my father-in-law had [00:27:30] been a classmate of Malcolm Sharp who taught contracts at Chicago. And his background was largely philosophy. And he had a contracts casebook put together with Frederick Kessler, another refugee from Hitler because his wife was Jewish. He wasn't but ... So you had philosophy and comparative law.

This is the way the Germans [00:28:00] do it. You've got contract law in another developed economic system. How do you do it? And it raises questions you wouldn't get otherwise. Breaking you out of the assumptions of your own system. So it was quite a set of contracts materials they had. And I had Nick Katzenbach, he [00:28:30] was all interested in those materials and stuff.

Then I'll tell my story. I wanted to go into teaching. I wanted a teaching job and they have an institution called 'The Meat Market'. And 'The Meat Market' is Association of American Law Schools ... The Deans or somebody from ... The chair of their hiring committees and stuff, they will all attend it. It used to always be in Chicago at the old Edgewater Beach Hotel, long torn [00:29:00] down now.

I had made appointments and at least had enough paper credentials to make an appointment to get my five minutes, if that, with [inaudible 00:29:12]. And I had taken every California law school. There are a lot of law schools in California and I think I threw in a couple in Oregon too. That's what I did, because I figured I wanted to go back to the west coast.

[00:29:30] I was 25 years old, never practiced, then a law clerk and a [Bigalo 00:29:38] teaching fellow and by the third day and towards the end of the thing, I was tired and not feeling very secure and happy because I didn't think it had gone all that well. There in the hall [00:30:00] was Nick Katzenbach, the Chicago professor that I worked for, he said, "Stewart, you look like a

man who needs a drink." I said, "I agree with you, Nick, totally, but you guys don't pay Bigelow teaching fellows enough money to afford a drink in this damn hotel," which was true. He said, "Well, what you've got to do is go the Yale cocktail party. Now, he'd come to Chicago from Yale. I said, "I don't know anyone at Yale. I mean, I have no business going [00:30:30] to that cocktail party." He said, "Go, take a drink, and if anybody says anything to you, tell them I sent you." I really worried about this. It was stealing a drink from the Yale Law School. I didn't have any notion that impliedly they were offering me a drink.

I went and there was the room. I walked in and I got my gin and tonic. I remember what it was [00:31:00] and tried to hide in the wallpaper at [inaudible 00:31:04]. A man walks by me. We had these great big badges on with our names on them. He stops, does a double take, and says, "Why, Mr. Macaulay, someone's written me about you. Jack [Richey 00:31:19], Dean, University of Wisconsin Law School and had I not gone and stolen a drink from Yale, who knows where I'd be today. [00:31:30] Nick likes that story. I told him later about that guy. What happened? We had a discussion and then within a week, I had a telephone call asking would I come up to Madison and flew up from Midway Airport. O'Hare wasn't open yet. That takes you back in time, and on a propeller plane, a four engine propeller DC6 by Northwest Airlines in those days, [00:32:00] came, did my show and tell up and down the halls visiting people.

It was snowing when I was driven out to the airport to go back. They were saying, "Oh, don't worry about this. This isn't much snow." As a Californian, it looked like ... We flew to Chicago and circled the field. Suddenly the wing went over; the flight attendant fell into the laps of the people next to me. [00:32:30] They had to get down. This was their turn to get down. If they didn't get down, they would circle the airport some more. Two weeks after that, I got a phone call. "You want to come to Madison?" A job offer.

REEVES: Your time at Chicago wasn't necessarily actually teaching.

MACAULAY: No. I was a teaching fellow in the sense I had papers to grade. [00:33:00] Nick Katzenbach taught contracts the summer between when I'd been hired and before I came to Madison. He was using this Kessler and Sharp materials and such. I was there taking more notes than you can imagine. I had to have something to teach. This was Nick's look at thing. I got a phone call from him. He had the flu. It's the plot of A Star is Born. [00:33:30] I get to teach the class, which turned out to be great. I'm not so sure I was a smash hit, but I had seen a class and actually taught a class before I arrived in Madison for a week.

REEVES: Did you have to give a presentation when you were here?

MACAULAY: Oh, yes. [crosstalk 00:33:55] It was largely about the 9th Circuit Court of Appeals, my experiences there, [00:34:00] with Judge [Denman 00:34:01] and that sort of thing. I was checking on Wisconsin. I didn't know much about the original Wisconsin Law School, but I was checking with the people there, Malcolm Sharp, who was a great mentor for me, more and more. Wilbur [Katz 00:34:25], a former dean there. He was Sharp's friend. He had me go talk to [00:34:30] him. They obviously were very taken with Willard Hurst, who was here, the great legal historian. Hurst was trying to build a different kind of law school. He had gotten grants from the Ford and Rockefeller Foundations. They wanted people who had been in administrative

agencies. Very much their theory was that's where law was going. These are people coming out of World War [00:35:00] II, the timing. Then they wanted to get younger people who were not so carved in stone in the role of what a law professor was. They wanted to open up things.

Willard wrote one of the first studies of lawyers and what lawyers did. Again, yes, you have to be a master of case [00:35:30] analysis and all that. Those are tools; they're means to the end; the end is solving problems or avoiding them. Hurst was trying to broaden things. Basically, they still taught contracts and I still had to show up prepared to teach contracts. Ran into another thing, there was a required [00:36:00] course in restitution. These are all mostly what's left over in our law from the old British courts of equity. In some ways, there's the law of contracts and then there's the law of anti-contracts, which are the law of restitution. It's all exceptions to the rules. You've made a mistake; can you get out of a contract under some circumstances, [00:36:30] lots of stuff. I just had an awful lot to learn. I had a crash here.

I used a lot of Hurst money, as he wanted. There were a number of us who were really beginners, assistant professors. What we were supposed to do is go read. Of course, he gave us a reading lesson. It would be Max Weber [00:37:00] or it would be Parsons and Smelser on economy and society. The one that turned out to be most useful to me was Malinowski's *Crime and Custom in Savage Society*, just pushing out into sociology and anthropology. Then he really wanted economic history. I read the history of the Ford Motor Company and the history of General Motors. Those were the things. [00:37:30] He was trying to say who uses this stuff? Where does law matter? How do we look at things? The most fascinating thing was we would all get the Hurst treatment. You were invited to lunch over at Tripp Commons at the Wisconsin Union.

You'd go to lunch with Willard. He would talk about your 10 year plan. Now, think about this. Where I was [00:38:00] in that career and stuff, maybe a 10 minute plan would be more appropriate. His notion was wait a minute, wait a minute. You get so bogged down in the immediate, that you got to push to get outside this. That's where he was just wonderful from this standpoint. I had a semester off; I had a couple of summers off with reading lists. This was just broadening what you might want to look at.

REEVES: Can I [00:38:30] back you up just a touch?

MACAULAY: Sure.

REEVES: I know from your readings that your wife wanted to be a big city person.

MACAULAY: Oh, absolutely.

REEVES: You lived in San Francisco; you lived in Chicago. Now, you're moving to Madison. I'm wondering you're talking about your academic transition in Madison. I may ask more about that, but what about the personal or the familial transition?

MACAULAY: You have to remember that Jackie thought it was just hysterical [00:39:00] that we were going to Madison. Her father, he had a college degree from here as did her brother

and as did her sister. They grew up in Racine for heaven's sake. How we got back here, she just thought it was funny. Now, I will confess that I was probably had the bad habits of people from the coast when they look at the midwest. I could [00:39:30] still remember that the radio station here was WKOW. W-KOW. I assumed that it would be like the Grant Wood picture, the guy in the bib overalls with the pitchfork and such. What happened was we moved into university housing, Eagle Heights. I started for the princely salary of \$6,250 a [00:40:00] year. You got a quarter more if you taught summer school. The university houses was the salvation because it was very nice housing for a fraction of what any competitive housing out in the city would have cost, so we had that. It turned into, it was just a wonderful place to live. It was the United Nations. There were people from all over the world [00:40:30] there. You got two things out of that, that were just wonderful. You met people who were not law professors. You've got to get out of the bubble. That sort of thing. I still, well I suppose, there's one, I think ... I'm trying to say I'm now so old, the people have died off, but we had friends for the longest [00:41:00] time who we knew because we knew them in university houses. Indeed, our house is next door to the house of a professor of chemistry. He was all eager that we build it. There he was. This kind of thing.

That's another part of Jackie. This isn't being orderly. Her father was the CEO of SC Johnson's and Son in Racine, [00:41:30] essentially through the 1930's up into World War II. He was the one that persuaded Mr. Johnson to go talk to Frank Lloyd Wright to build the great Johnson administration building. Jackie had argued with Frank Lloyd Wright about going to war against Hitler when she was eight years old. She was busily reading Time magazine at this point. She didn't think this Hitler fellow was very nice. Wright was a pacifist, but he liked her. He gave her a hero, she gave prints, which was one of the treasures.

[00:42:00] One of the ways we coped with Madison ... We came in 1957. In 1962, we have to get out of university houses. There's a limited time you can stay then. We went out to ... Wright had died, but Taliesin Associated Architects were still there. We were assigned Jack Howe, who was a Frank Lloyd Wright chief draftsman. [00:42:30] The Ploughts had a house by William Wesley Peters, who was Wright's son-in-law and chief engineer on the west side. We have a house by Jack Howe right next door. They make a T as to where they are.

One way of coping with small town living was to get a Taliesin house. This turned out to be the weirdest small town you ever want to find. I used to try to [00:43:00] help the law school recruit people to join the faculty that I wanted to join the faculty. What I would tell them is, "Yo-Yo Ma will never come to Madison, Wisconsin on the weekend, but he'll be here on a Wednesday night." It's true. Obviously, he'll be in Chicago or Minneapolis making money on the weekends. The number of people that come through Madison [00:43:30] that you want to see and the rest, that it is a ... It's not a boring place at all. The people at this university, you didn't feel that you were in some wasteland. You felt quite challenged, exciting and so forth.

I think we ... Essentially what she didn't want to do was be a suburban house wife. [00:44:00] She honored people who made that choice, but that wasn't ... I mean, you have to realize I managed, somehow or other, to get the girl to marry me, but this was one of the smartest people, I mean off the charts on IQ and things like that. This was an incredibly smart person. She

needed something to challenge her. Of course, she popped into graduate school and got a PhD here. [00:44:30] Bored she was not.

REEVES: You've talked a little bit about your initial time here. I want to ask a couple more questions about that. I'm not sure how much ... I'll probably go about another 15, 20 minutes. You talked about teaching contracts. You talked about the fact that you had taught at least for a week at the University of Chicago. How was the ... What are your memories of those first year or first semester of teaching?

MACAULAY: [00:45:00] Well, of course, Jackie loved the phrase ... Her PhD was in psychology. She came up with a lovely phrase, that I guess is used. It wasn't entirely hers, but the Imposter Syndrome. What am I doing at age 26 and 27, standing out in front of all these people? Now, if you want to talk about, yeah I'd been in Judge's law firm. I'd passed the California bar. [00:45:30] I studied past contracts. There was all this writing and scholarship on contracts. Law school is not like a graduate program. If you're going to get a PhD in psychology, or in sociology or history or something, you will know the greats in your field. You may not like them. You may criticize [00:46:00] them all.

Sociologists in the day, in the 1950's would certainly have known of Talcott Parsons and Robert Merton, could tell you who they are and had read their stuff. That's just part of your prelims will demand you do that. Law was not that way. You didn't get this. Suddenly I decided if I was going to be a contracts' professor, I better read [Karl Llewellyn 00:46:26] and Malcolm Sharp and a whole bunch of people. [00:46:30] I had this going on.

Also, part of my story is how my father-in-law influenced my career. Lon Fuller had gone from Stanford to Duke, I believe, and then to Harvard. What took him from Duke to Harvard was writing an article called The Reliance Interest and Contract Damages. It's one of those things, people criticize it. You don't [00:47:00] get to play in the contracts' teachers league, unless you've a pretty good idea of what's in that article. It really reshuffled things. It was a paradigm shift, a huge one. It was talking, "Well, what can contract law do for us?" It could be aimed at trying to achieve quite different purposes. The expectation interest to put you where you would have been had the contract then performed the theory, being, well people might as well [00:47:30] perform their contracts because, or the court's basically going to treat them as if they had, financially. Restitution interest, it was give back something that you haven't earned. I made a down payment and you didn't perform. I could get the down payment back kind of thing.

The reliance interest is that thinking I had a contract, I then went off and did something that you should have known of that. You've just had the fast version of Fuller. It sounds so simple, [00:48:00] but great theories always sound simple. I have a bias. If it's confusing, it's wrong. It's not always true. Well, my father-in-law, Jack Ramsey, in Racine, we went over to show the grandparents very charming little Monica at this point. They were appropriately charmed by her. He was asking me, "Well what do you teach people [00:48:30] in contracts?" I started explaining to him the expectation interest. Where you would have been had the contract been performed. As Jack would do, he exploded. "You are never where you would have been, had the contract been performed if you have to see a lawyer." Of course, he's right. Just delay and you have to pay the lawyer and there's a whole series of things. You're going to have to find

somebody to substitute for the guy that [00:49:00] you're having the fight with and all these things.

He told me a story, which was that during the Great Depression, there were three firms that made the containers for Johnson's products. Now, in those days they were called tin cans. Today they'd be plastic things and such. In the depression, instead of having a reverse auction, where they bid against each other to charge the least amount of money, Johnson's [00:49:30] determined which of the three needed their order the most to stay in business. They got the order. Jack said, "Well, you know me. I thought it was the morally right thing to do. You shouldn't take advantage of people because of depression. On the other hand," he said, "it wasn't entirely gratuitous on my part. What happened five to ten years later? World War II. Rationing." [00:50:00] What was the allocation of steel for tin cans to put floor wax in? Zilch. But we never wanted a can. They owed us one. Well, my career may rest on that story. Isn't that the basis for thinking about longterm continued relations as distinct from discreet contracts? The lawyer thinks of discreet contracts, someone like Jack thinks of longterm continued relations.

[00:50:30] Then he said, "You think it's just my craziness. Let me call some of my friends," and I fell down the rabbit hole to the wonderland of being an empirical researcher that way. Just, "Okay, I'll go talk to some of the friends." I used to joke my sample were business people who are friends of my father-in-law willing to talk to me. That's not how they tell you to pick a sample I guess, but getting access. [00:51:00] These were people who'd give me a lot of time and then of course using the contacts you had through alumni at the law school, I started talking to lawyers.

What are business practices? Well, one thing led to another and "Non-Contractual Relations in Business" gets written. I give it at a Midwest Division American Sociological [00:51:30] Association meeting in Des Moines. I guess it's an anniversary because it was my birthday. We were driving over on my birthday from here to Des Moines and the snow was coming down so heavy that the windshield wipers wouldn't clear it.

Willard got the paper and sent it to his friend Bob, [00:52:00] Robert Merton. Then I got sent to go talk to his friend Bob, so I went to New York and talked to Merton at Columbia and I've always said, "Thank God I was so dumb I didn't know who Robert Merton was because I would have been paralyzed." Assistant professors of law did not get audiences with one of the two or three leading sociologists in the world except Bob and Willard were buddies [00:52:30] from Social Science Research Council. He gave me lots of comments on this sort of thing.

Fortunately, I had Jackie who was taking a social science PhD to help me translate. That was very useful. "This is what he's after," she was able to say. He invited me to give the paper at the [00:53:00] American Sociological Association, the whole organization's annual meeting. That would have been I guess, the summer of 1962. We went down to Washington and the session was "Applied Sociology." Pitirim Sorokin, who was one of the grand old men of sociology and a mentor of Merton's when Merton was a young man.

He was the big star [00:53:30] and they were in one of the ballrooms and Jackie was there and she tells the story that she thought there were like 300 people there because this was

one of the grand old men of the field. He went on and on and on and Merton kept handing me notes, "Can you cut?" Sorokin was going way over his time in these kinds of things. So Sorokin finally subsided [00:54:00] after telling us Hitler was a sociologist and riffing on that for a while.

It was my turn. I stood up and if 300 people had been there, about 250 got up and started walking out so I got to start my talk to the backs of all these people. Merton gets up and says, "If the intellectual tourists will be quiet we have work to do." [00:54:30] They did shut up. Maybe it was out of that he felt a little sorry for me or something but he was the one. He wrote a letter to the editors of the American Sociological Review saying they ought to print the darn thing. That's not blind review but I'll take it. And so, "Non-Contractual Relations" [00:55:00] gets in print and it's still alive 50 years later.

REEVES: Maybe just one more thing and then as things happen, my best-laid plans of getting us into the 70s have not materialized.

MACAULAY: That's right.

REEVES: That's fine. That's what this is all about is trying to get what you want to say as [00:55:30] well as what I want to ask. I do want to ask, since we've been talking about these early years. We are inside a law school but I'm going to assume it looked a lot different in 1957 to 1962 than it does today.

MACAULAY: Yes.

REEVES: I'm wondering if there's any way you can describe what building you came to and ...

MACAULAY: The building I came to first of all was made largely of wood, had three or four stories. [00:56:00] Maybe three with a kind of a turret at one side of it. It had gargoyles along the side and the ... The symbol of this law school is the gargoyle and that's because when they tore it down to build a new building one of the gargoyles had fallen and George Young the dean managed to pick it up and it's downstairs on display as part of the history.

[00:56:30] Clearly, the building would have been condemned if it was anything other than a state building because it was falling to pieces. It was 1890s or something it had been built and Wisconsin winters ... Winters and summers, expansion and contraction and all that, they're not kind to buildings and such. It was in pretty sad shape that way. On the other hand the offices at the top, you could look off [00:57:00] and you could see Lake Mendota from them. The hill is a beautiful place. The architect of that building handled it. He actually used the view and this sort of thing.

The large first-year classroom worked and it was U-shaped and so if you're going to have discussion classes where the professor is calling on ... They're big classes. You're talking a hundred to [00:57:30] 200 students and you're calling on people. This kind of thing. A U-shape is the way to go. People are looking at each other. It's much more a discussion kind of thing. Signs saying, "No Smoking," all over the place for this old wood building. Many of the faculty

conducted their class smoking cigarettes and the students felt they had a God-given right to smoke as they took their final exams. That certainly has changed as part of [00:58:00] it.

It had certain charm to it but it was obviously ... You wondered if it was going to fall down or burn down. It was not in the greatest shape. It had a basement large classroom but while I thought the upstairs one worked beautifully, the basement one was hell. The architecture had to be fought to teach [00:58:30] in that one and these kinds of things. It was quite a place that way.

The student body was a lot smaller so that it would fit in the place. I started off ... It had a wing of the library that's still here. This whole place is bits and pieces from about three revisions. That's why it doesn't make any [00:59:00] ... Finding your way around is terrible. Over in that corner there is a wing that was there. The reason I mention that is my first year here, John Stedman was away on leave. He'd gotten a leave to go someplace so I had John's office. It was the top floor with a beautiful view of the lake and the whole thing and it had room. It was bigger than any faculty office today would be.

[00:59:30] Okay, Stedman comes back. Now what are we going to do with our assistant professors? There's a row of offices, much smaller than this one, down along there. I had one. Somebody else had the one next door to me and Willard Hurst's graduate student, Justice Shirley Abrahamson today, she was down there so there were a lot of us in this. My father-in-law [01:00:00] came and looked at it and he said, "They at least ought to give you an office," which he was, he didn't think it was ...

REEVES: Let's do, we are at the hour mark. There's one more thing I want to ask though, because it's not on my list and I might forget it if I don't. We've gone through, we're into the early 60s. I'm just wondering if at this point, if you remember what you thought about Madison as ... by that I mean was it a place, at that point, you think you're [01:00:30] going to stay?

MACAULAY: Yeah. The real decision was made, what are we going to do about a house. We, as I say, got the Taliesin Associated Architects and Jack Howe. First, Vince came in at \$45,000.00, which might as well have been 45 million because that was so ... People were buying houses for \$20, but you know, you just ... [01:01:00] Cars were \$1,500.00. Gasoline was 20 cents a gallon. It's so hard to translate all this, but we went ahead and chopped things out of the house, and so it went down to \$35,000.00. I chopped the trees down and I painted. I planted the landscaping. Building a Taliesin house, it seemed to me, was putting some very deep roots down, and yet, [01:01:30] what will come up in the story is we went to Chile in 1970.

We went and then when we came back, visited at SUNY Buffalo, the dean there was a sociologist trying to build a law and society faculty, and as inducement to come he said there would be a position as an assistant professor in psychology for Jackie. [01:02:00] There wasn't, so we came back, but the point is, we didn't move off to Buffalo for a year. Let's say I was pretty annoyed.

REEVES: Well, we will get to that as we continue our journey here but I need to wrap it up for today, so Stewart, thank you very much.

MACAULAY: You're quite welcome.

REEVES: [01:02:30] Okay, today is Tax Day, except it's really not Tax Day, April 15th, 2016. This is the second interview with Stewart Macaulay. My name is Troy Reeves. We are at the Law School Library on campus, and this interview is being done for the UW Madison archives oral history collection. Stewart, as we did last time, I would hope you'd be able to say your name and spell your last name.

MACAULAY: All right. Stewart Macaulay. S-T-E-W-A-R-T. [01:03:00] Then, M-A-C-A-U-L-A-Y, with no capitals in the middle.

REEVES: Excellent, thank you. I'm going to slide this a touch closer to you.

MACAULAY: Oh, okay.

REEVES: As we were, we left off, and then as we were talking here, we left off with the piece that you wrote, the non-contractual ...

MACAULAY: Relations in manufacturing industry.

REEVES: Then, you said that there was another piece.

MACAULAY: [01:03:30] All right. I did two empirical pieces, and again, we have to realize, remember that for law professors that do empirical pieces at this time, was a bit nervous making because this is what law professors did, and when everybody's out of step but you, you should have one or two thoughts about maybe you're making a horrible mistake. It did seem to me that [01:04:00] I simply needed to understand law in a broader way than the conventional approaches, which reading statutes and cases and that kind of thing. I did the interviews of business people and lawyers about use and non-use of contracts and my father-in-law, I believe I told you, had his, he was the one who exploded when I was explaining [01:04:30] a rather conventional contracts analysis, wide spread in law schools, and sent me on this kind of task.

He told me two stories that were quite important in my career. One big part of the story was that during the Depression, he was the retired CEO of SC Johnson & Sons in Racine, and they put their products in what then were called [01:05:00] tin cans. They'd be plastic bottles now. There were three firms that manufactured tin cans that supplied them. He pointed out that instead of having a reverse auction, that is driving the price down, Johnson's determined which of the three needed the order most to stay in business and that's how they got the order.

Well, that's giving away money isn't it? I mean [01:05:30] that isn't economically rational. He laughed and said, he thought it, a, was morally right but then he said, "Five years after this, six years, somewhere right around there, we had a thing called World War II going on. Steel was highly rationed and obviously the ration for cans to put floor wax in was not very big," but as he said, "We never wanted a can. They owed [01:06:00] us one," and the point is, long term continuing relations and resting not necessarily on legally enforceable contracts, but simply to give and take, and this sort of thing. Contract law exists along with other normative and

sanctions to systems of the society, and they affect each other. They overlap and such. Seeing this, and it turns out, I think, to make us more practical and more theoretical [01:06:30] at the same time. We're theorizing about the consequences of law as I see it.

Then, I did a study. I wanted, this one was to limit law, where law wasn't as important as it was traditionally assumed. I wanted one where law was quite important. In fact, people struggled to get it and so I sort of stumbled [01:07:00] into talking with some people and discovered that there was a statute that has started in Wisconsin then spread across the country, then became a federal act regulating the relationship between auto manufacturers and auto dealers. The Wisconsin was where the first one came in. If you go back to the 1930s where these things started, that relationship was, the kindest word you can come up with is corrupt. Essentially the dealers had to bribe the [01:07:30] area managers, or the auto manufacturers to keep their franchises.

They were coerced into taking vehicles that they wouldn't have taken otherwise, just to keep the franchises. The story is not a very pretty one and it's all in congressional hearings and such. I managed to talk with the representatives of the automobile dealers [01:08:00] in 48 out of the 50 states, and the only reason I didn't talk to anybody in Hawaii and Alaska is they, at that point, they didn't have a dealers association for me to talk to. We covered that. I did, there was a lot of legislative history one could go to. It had been covered in a document called, Automotive News. I did look at all the cases that had come up, [01:08:30] this kind of thing. I really enjoyed this.

My father-in-law was responsible for the first one, the first study we talked about. My own father had been a senior comptroller for Chevrolet Division of General Motors. I somewhat hesitantly asked if he'd like to look at the manuscript. He agreed he would and he [01:09:00] came back and he said, "You probably don't know whose signature appeared on a Chevrolet franchise representing General Motors during the 1930s." I said, "No I didn't know." The answer, as he put it, "Mine." He knew something about this. Oh my did he have comments on that manuscript, as you can imagine. He knew all kinds of things and that just opened things up, so I really [01:09:30] enjoyed this. The Russell Sage Foundation put it out as a book. It has preface by two scholars, saying all kinds of nice things about it. It's almost completely disappeared. In any event, it was an empirical study. It was looking at both the, where the law came from and the consequences of the law, [01:10:00] and it was the place where law really mattered because, you may know that, it took the bankruptcy of General Motors and the corporate reorganization as a result of the 2008 crash and all that, for an awful lot of auto dealers to lose their franchises. Up to that point, they were defended by all these statutes. But the bankruptcy trumps the statutes on these kinds of things. You just [01:10:30] think of General Motors as we don't have Pontiac's, Oldsmobile's, Hummers, Saturn's, Saab's, all of those were just wiped out as a result of this.

Then, I did a piece combining some of the analysis I'd done of contract policies. With some empirical study about [01:11:00] forms that people were supposed to read, but the people who wrote them knew darn well that the general public wasn't going to read them. And in theory, these are contracts, but Todd Raycloff at Harvard once came up with a wonderful line, he said "If you teach contracts, it hurts to be told these things are contracts". You know, the fine print. Now it's evolved into computers, and you click "I Accept" and "I Have Read All of Amazon's

[01:11:30] Terms". There may be, what percentage of all the people who buy from Amazon have done that.

REEVES: You might be the only one.

MACAULAY: That might be. It gets down to something like that. Well this was on the original flood, when credit cards ...

REEVES: Mm-hmm (affirmative).

MACAULAY: Came and especially it was gasoline credit cards ... and of course, we did some asking people about the problems. What happens if you lost them, [01:12:00] and we finally got federal regulation that changed things around, but at the beginning, if you lost your credit card and somebody had it, they could go drive from Maine to California at your expense, and you owe the oil company the money. There's a limit on that now, but ... So I did a piece on that.

The point of this is, I was doing empirical things. And as a result, I got an invitation to the Center for Advance Studies and Behavioral [01:12:30] Sciences. That's on the Stanford campus. So it had, an academic side that I was quite happy, since my wife and I were both had Stanford undergraduate degrees. I had a Stanford law degree. Being able to leave the land of snow and things like that, and go out and be in California again for a year, that was a very nice kind of thing. [01:13:00] And when I went out, I really, my plan was just to do some more reading. To have the free time to sort of widen my horizons. The kinds of stuff that if I had had a graduate degree, a PhD in a field, you would've gotten in that, but of course as a law professor, you don't get that. You have to find time to make that up as you go along.

What happened was, [01:13:30] we had a sociologist on the law faculty here, and he left. He had been teaching sociology of law at the law school. One of our associate deans asked Lawrence Friedman to pick up the course. Another of our associate deans asked me to pick up the course. The coordination lacked a little something here, as you can imagine. And when Lawrence and I talked [01:14:00] about it, we decided we'd do it together. Well, I had been ... I got the invitation to go to the Center of Advanced Study. Maybe a month later, Stanford Law School invited me to come out at the very same time and teach contracts. Well, you can't be two places at once. So I had to turn them down. They then turned around and invited Lawrence Friedman to teach contracts [01:14:30] at Stanford Law School. So the two of us were in California at the same time.

We thought we would use a collection of materials, that two sociologists had put together. They said "No" they didn't want us to because they weren't in the shape for others to see them and ... then had they had another year to work on them would be fine and so forth. But, [01:15:00] they didn't want us to do that. So Lawrence said "Well, let's pull some materials together". So we had a number of talks, and this was trying to figure out, what in the world should this course be about? It was very ... what is the field? In a funny way, learned behavioral science, if that's your field, that's a method. [01:15:30] You say "Behavioral science, okay, it's a

way of getting some information", what information do you want? Where does it come from, what does it do? In one hand that's right, but on the other, that's pretty vague, on this.

So we had lots of talks, and then we finally figured we should go gather, we designed something as our operating outline. This might [01:16:00] have to change when we went and dug into the materials, and each of us took things and we met weekly, to see what we had been able to turn up, and where we go to that. We met weekly at the Mandarin Restaurant in Menlo Park, which was right next to, in those days, Southern Pacific Railroad tracks, they're now CalTran I think or something. The train that goes down the peninsula, [01:16:30] and so forth. And this was the time where, Chinese food that had some spices suddenly had taken off across the United States. Five years before, a Chinese Restaurant was Cantonese ... this was the Mandarin. Lawrence loved the new Chinese food.

So, we went to the Mandarin, we got there at 1 [01:17:00] o'clock, so the rush hour would be over, had our big Chinese lunch, and then the two of us sat there the rest of the afternoon, with the Chinese waiters wondering what these strange people were doing. But we got lots of pots of tea, we tipped well, we were good folks on that. And we put together the first Law and Society book. What is this thing about, and I can't say we created a field. [01:17:30] There was plenty around before we started, but we certainly refined it and pushed it and shoved it here and there, and did this. And the book has gone through 4 editions. But that was the first in the mid sixties.

And at that point, the problem was finding things. Because it wasn't a recognized field. You knew just what you wanted, but nobody had written that article. [01:18:00] What are those things?

In 2007 when we did the fourth edition, the problem was what to leave out. Completely different problem. What was the right thing for teaching, but you just knew there were kinds of things that we were putting to one side. Which is really a development of Law and Society studies, which has really gone so far from when I was a beginner. [01:18:30] But anyway, so that year at the Center for Advanced Study, allowed me to do my part, and Lawrence is a certified workaholic, so he did his part in putting the thing together.

Now the book, it's a recognized course, given many places and so forth. The book sells, but it's not a runaway best seller by any means. [01:19:00] But people will come up and tell you things. "Oh I love your book. I photocopied the last 3 chapters from my class". People who don't have law degrees, have let's say an unusual view of copyright law.

REEVES: Mm-hmm (affirmative).

MACAULAY: A rather creative view of copyright law. So, it's around. Sadly, I [01:19:30] don't think there can ever be another. What happened was, when we did the first one, to get permission to reprint these articles, all you had to do was ask. They just wanted to be sure, what you were going to use it for and that kind of thing. Now, you get these incredible fees you have to pay, for permissions to reprint. I had money left over in 2007, from a [01:20:00] professorship. My last name is Macaulay, and the Scot in me didn't spend a lot of money on

these kinds of things, so there was some money to pay the fees to do it. I don't know where you'd get the money now for another edition. Which is sad, but ... And we do that. Anyway, so there we did the year in California.

REEVES       And you were all there? You, your wife, and the kids.

MACAULAY:       Oh, yeah, and the kids. We were all [01:20:30] there.

REEVES       When we talked in the pre-interview, you talked about perhaps not being deeply involved in politics, but '66, '67 in Northern California, my guess is there's clamorings about what's going on in Vietnam and [crosstalk 01:20:49]

MACAULAY:       Yeah, it's beginning at that point. You have to ... I was very torn because I [01:21:00] thought Lyndon Johnson had done wonderful things on the Civil Rights Act, and that was my cause. And so here we've got, you know, this, and I also had ... Looking at the politics of the country and Richard Nixon's Southern Strategy, which was basically a racist strategy, so [01:21:30] you know, I come out of that and then I walk into, well, isn't this crazy war a mistake? Well, probably so. And I was conflicted and torn as to what to do. I think a lot of people were.

I know, I still remember teaching a contracts class here and Paul Soglin was a student. Now, this takes you back a few years. [01:22:00] Mayor for life of Madison, that took Paul a long time. And he got up and he said, "They're beating the protestors at the business school. Come on!" And a bunch of people left my class to run up to the business school. I remember the law school having to call off classes and evacuate the building, because the building was set up for air conditioning. [01:22:30] We haven't got windows. If you look around this building, it is ... My own notion, it's what not to do as an architect, but then, you know, maybe ... Or maybe the architects get back at lawyers. But, well, the teargas on Bascom Hill was a huge cloud of such, and our air conditioners sucked it all in. The teargas [01:23:00] had gotten to a point inside the law school building, we had to call everything off.

I remember the Wisconsin National Guard doing jumping jacks in the hall outside the classroom where I was teaching a contracts class. Or one of my favorites, one group of protestors decided that the bad people were lawyers, and the lawyers really were the lackeys of the dominant class and so forth and so on, so they were [01:23:30] picketing the law school in March. It was a good Wisconsin March day, meaning "good" at typical, that is, the snow was coming down, the wind was blowing, and it was terrible outside, and here they were. This group of Wisconsin students was picketing outside. And this young man comes in the door of the law school, to the lobby. It's a different arrangement now in the last change to the building, but at that point he came in [01:24:00] and just stomped and was trying to get warm, and he said, "Damn, those kids at Berkeley have got it easy." So you know, you have stories like that.

REEVES       Had the law school gone through an iteration, a remodel or a renovation, from the time you got there and then by the late '60s?

MACAULAY: Yeah, well, we've got the wooden building, and it's [01:24:30] torn down in '63, and then we have the most recent changes, which are, what, '94? I think that's right, yeah. My daughter's in the class that was most affected by the most recent changes, and she's graduated in '97. She says no one in her class ever will give the law school a penny, because they were the homeless, the [01:25:00] homeless students looking for a classroom. We were all over the place, and the law school itself was coated in foot-deep dust, it seemed, and all the rest.

REEVES But it had been changed from the wooden building to something by the late '60s?

MACAULAY: Oh, by '63.

REEVES Okay.

MACAULAY: That's the ... And still, all of that '63 building is still here. It's just stuff has been built around it and a few things have been taken down and such.

REEVES [01:25:30] So with that change, did you get an office? Because wasn't the anecdote from last time that [crosstalk 01:25:36]

MACAULAY: Oh, oh, okay. In '60-

REEVES Somebody peeked their head in and wondered when you were going to get an office.

MACAULAY: Yup. That was my father-in-law that had that. Oh, yeah. No, in '63 or '64, whenever we moved into that building, oh, I got an office in the tower, over the faculty tower. I [01:26:00] packed up that office a bit and we went off to Chile in 1970. When we came back in '73, I moved into the office over in the tower that I'm still getting out of. Actually, because of the problems of having money enough to hire anybody, they haven't needed the office. And once they told me there's no hurry, well ... I'm about 80% moved out, and all [01:26:30] the books have been given to the library, for example, and that kind of thing. But there's actually getting and doing the last [inaudible 01:26:38] That's still up ahead.

REEVES Let's talk about Chile, then, unless you think there's something else we should [crosstalk 01:26:46]

MACAULAY: No, no, let's do that. My wife had gone to Europe when she was 14 because her father went [01:27:00] to Europe to salvage what he could and restart SC Johnson's European business after World War II. She'd been at an English girls school, she'd been at a Swiss girls school. And she very much hoped that our children could see the United States from abroad and get some notion that the world is not the United States, [01:27:30] and some sense of how we're viewed, and just a wider thing.

So we ... I started looking. My first notion was, "All right, we'll see if we can't get something in England." Well, I got a nice, you know, possibility, but the amount of money involved, we just couldn't handle. They just weren't going to pay much. [01:28:00] What had

happened was, the International Legal Center ... Everybody in it always referred to it as a "wholly disowned subsidiary of the Ford Foundation." We had our problems with them. They were looking for people.

Puerto Rico had all kinds of demonstrations [01:28:30] for independence. The person who was going to be the third director of the Chile Law Program was a professor at the university in Puerto Rico, and he, not at the last minute, but fairly far down the line, backed out because things are so upset at University of Puerto Rico, he doesn't feel he can leave for a year. And [01:29:00] so they're looking for someone to take the Chilean job. They like the idea that I'm interested in empirical, you know, looking at the impact of law and what's happened.

Chile was the home of Eduardo Frei. He was the president of Chile. And Jack Kennedy's Alliance for Progress, which was our big, you know, aid program and also [01:29:30] anti-Communist program, had ... The Alliance for Progress had put a fair amount of money into Chile, and the idea was, the Chilean law professors were interested in looking at the impact of all these reform laws that the Chileans had had. Now, they were also interested in the reform of legal education, for teaching more problem-oriented methods and less [01:30:00] one guy lecturing to you about the Chilean civil code and these types of things. I thought it could help with something like that. The one problem was, while I had taken Spanish in high school, had taken Spanish in first year in college, I always said that they taught me one thing. "You can never speak Spanish." One thing they- All right, that might be. I [01:30:30] could get through it. But getting a B on the tests, and actually being able to live in the language are two quite different skills.

At age 40 I got to learn Spanish, being totally convinced that I couldn't do this. Because I had so much trouble with the thing. My wife, on the other hand, was very good with languages. She knew French and Italian, which gave her a little problem with Spanish, only that if she got excited, [01:31:00] maybe a French word would pop out, or an Italian word would pop out. We just decided, all right, we'd try it. We'd go to Chile for the year, and we would learn Spanish.

When Kent State Cambodia happened, this was the killing of the, the famous picture of the woman kneeling [01:31:30] over the student who's been shot by the Ohio National Guard, and all the rest. People were assuming the Madison campus would blow up that night. The chancellor, Edwin Young, called a bunch of us senior faculty in, and saying his theory was that the students would do things at night, because nobody [01:32:00] would see them doing things, and they would feel free to do all kinds of stuff, and violence, and these sorts of things. So it would be much better if we had members in the faculty out about, looking at things. Okay.

My wife was doing some teaching in psychology at this point. So all right, we decided [01:32:30] that if the chancellor asked you, you should do this kind of thing. I remember it was night. The students were on University Avenue. That would be east of Park Street. The Dane County sheriffs were west of Park Street. In between were Jackie and Stewart Macaulay, [01:33:00] which was not a good place to be under these circumstances.

Fortunately, Jackie's Spanish TA, what happened was we both hired graduate students in Spanish to get us going trying to learn Spanish. He had his Che Guevara red beret with a red star

on it. He comes racing out of buildings across the street, grabs [01:33:30] Jackie, and says, "Come on." We ran and, whew. So life was at least not dull.

The chancellor was proved that as a psychologist he was a wonderful economist. Let us say that having the faculty watching people made no difference whatsoever. They threw rocks at the sheriffs, [01:34:00] and the sheriffs marched down on them, and it was not very pleasant.

REEVES Did he pull you into Vilas Hall at that point?

MACAULAY: No. What you had was a group of small buildings. Before, if you look where the business school is now, there was a bank and a [inaudible 01:34:21] drug store on the corner. Then some little houses. They're houses that had been there forever [01:34:30] and ever, and the university had taken them over and done all kinds of things with them. Some program was in this one. He came running out from one of those houses, grabbed us, and took us over. Oh, that's long gone now. They made changes on the campus.

Well, anyway, we went to Guadalajara, and Berlitz immersion program. Then we arrived, from there we [01:35:00] flew to Mexico City, from Mexico City to Bogota. Spent the night in Bogota, Colombia, and then flew on from there to Santiago. Of course, we discovered that we had learned Mexican. If you think of English, people from Jamaica, people from Mumbai, people from Oxford, England, and people from [01:35:30] Texas, may all be speaking English, but they sure don't sound alike.

Well, Spanish is the same thing. Chileans think Mexican is hilariously funny, a little like we think Crocodile Dundee Australian is funny. All that learning meant that we still had some learning to do. Oh, that was hard.

REEVES Let me just jump in with one more thing, since we've sort of been talking about [01:36:00] a period here on this campus. It sounds like you left in the summer, so did you, does that mean you left before the Sterling Hall bombing?

MACAULAY: Yes. We were in Santiago. I had come home from the office. The kids were being fed. Chilean fashion, you feed your children. You eat good Latin American style late. That's the way we did things. I had a glass of good Chilean wine in my hand. I remember it, because it really [01:36:30] hit me. I was listening to our shortwave radio, listening to BBC news. Normally, Madison, Wisconsin, was not something in Santiago, Chile, you heard much about. All of a sudden there was this totally frustrating news report. Because they told you enough to know that you really wanted to know what had happened, but not enough to satisfy at all. [01:37:00] I was trying to figure out every way how I could find out what had happened, and what had gone on. That was something that took place here, and we heard about, and horrified, of course, on the radio.

REEVES In terms of finding out about it, we should remind people how to find about things in 1974 was different than how to find out about things in 2016.

MACAULAY: Oh my heavens. Absolutely, you did not, [01:37:30] no nice internet to click on, and you're there. The international edition of the Herald Tribune was available in a couple of places in downtown Santiago. But you have to wait till the next edition, and wonder if they're going to cover it. Now obviously, I know I made a couple of phone calls to try to find people here in Madison who could tell me some things. I don't know that I got [01:38:00] anyone. That's like, you're talking international long distance telephone call, which is not the same as clicking on your email, where you can get people around the globe. It's quite different.

REEVES Or using your cell phone.

MACAULAY: Yeah, right. All of that just wasn't, that was really, well, we were quite shook by it. Good heavens. It couldn't have happened. Although my wife [01:38:30] was very into trying to keep protests nonviolent. That was one of her big causes. Gandhi, and Martin Luther King was the sort of thing that she was- They don't stay nonviolent. When they do, that's something to remark on, because it's a bit miraculous.

REEVES Well, so you're in Santiago. [01:39:00] How would you describe, or how could you describe, the work that you're doing there?

MACAULAY: All right. The way I'd describe it is we had all of these things, let's study the impact of the Fray reforms. There were, cooperatives were set up. Unionization was encouraged. There were just all kinds of development programs that, let's develop this industry and that industry. This was the kind of [01:39:30] era that it was. We had been there, I don't know, a month, two months, something like that, and they had an election. A gentleman named Salvador Allende was elected, much to everyone's shock and surprise. Everyone was sure the conservative was going to win. Allende won. The [01:40:00] net effect of that was to give me incredible difficulty. The Ford Foundation was looked on by the Chilean left as simply an arm of the CIA, as a way of, you know, having CIA programs without the negative label on them. This was their view. I have some friends who agree with them but that's another story. At least [01:40:30] we didn't think that's what we were doing, and such. And as a result, it just was so frustrating trying to ... You could continue what we'd been doing but getting new things going was just impossible.

Finally, and it took, oh, five months, [01:41:00] I found some people in the Ministry of Justice who had been part of the Christian Democrat group that broke off and joined Allende's coalition. We found ways of doing some things that way. I found a couple of people who were interested in finding how the worker co-ops were ... You know, [01:41:30] what were the consequences? So I ... But it was so frustrating.

Then I had this job of ... They had a new person at the Ford Foundation, and he wanted a critical report on the Chile Law Program at the International Legal Center, which put me right between the guy in Santiago for the Ford Foundation, he was the head of the Ford Foundation, and [01:42:00] the head of the International Legal Center in New York, because the head of the International Legal Center in New York basically wanted me to write a report that said this was one of the most brilliant things ever done and there's not the slightest thing wrong with it. The

guy at ... The Ford Foundation person was extremely critical and a report like that would've been thrown in the wastebasket. I mean, he would not have accepted anything like this.

And so I ... Finally John Howard came [01:42:30] to Chile, he was the head of the International Legal Center, and we did some work so that he could understand a little more about the conditions on the ground and what the Ford Foundation was seeing. I mean, part of it was things like, "Why do we have an American law professor sitting here? Shouldn't this money all go to Chileans?" To get the program started you probably needed one. Whether it was time to say, "We don't need one anymore," that again is ... we can talk about. A [01:43:00] lot of what I did was useful to the Chileans, and that was, I ran interference for them with New York, because the New York office was very suspicious of them, in ways I don't think was justified, but ...

So I had a lot of ... I taught myself something, and I didn't realize that this was on the agenda. I taught myself, when I came back to United States, [01:43:30] never, ever, think about being a dean. Because I was an administrator for a year and a half and I think I did pretty well at it, but it was the kind of thing that I had to do everything. I really was not good at delegating and getting others to do the things. And I really didn't enjoy being in the middle of New York versus the Santiago office. That [inaudible 01:43:59] [01:44:00] want to say, political, I guess, in one sense of the word, in ways that made me quite uncomfortable. You write ... Well, now, again, maybe say I was doing a lawyer's job, writing a brief that would put things together. Well, okay, that's fine, but I still was much more of a scholar than a lawyer in terms of my temperament and I wanted to do. I wanted to say what I wanted to say [01:44:30] and I knew enough not to do that. That would've been ...

So we had ... Certainly from the standpoint of the family, from the standpoint of me, I learned a lot and the family learned a lot, and indeed it was a step towards my oldest daughter and her interests. I mean, she graduated from high school in Santiago, and she had studied Don Quixote, in Spanish [01:45:00] no less, and so forth. When she went to college at Berkeley, she took some Spanish classes and someone started talking about the linguistics of Spanish and she was very interested in this. And she puts it, she always liked ordering things, putting things in order, and so she then took a linguistics course and now she's a professor of linguistics at this university, as I think [01:45:30] you know. Well, she says that it started by doing her senior year in high school in Spanish.

REEVES        I don't know enough about, embarrassingly enough, about Allende's time in Chile. Was he in power the entire time you were there? Well, except for the early months?

MACAULAY:        Yeah, he was [01:46:00] in power the entire time we were there. We came back to the United States after a year and a half and I was teaching a class here, sometime in the spring semester, as we like to call it. The winter semester, whatever ... Second semester. And I came out of class and somebody said, "The military has just overthrown Allende." So that was about two years he [01:46:30] had. It was a left coalition. Communists, Socialists. He was a Socialist, and the thing that Americans never got straight was, the Communists were a much more centrist party than the Socialists. The people who really wanted to change things were the Socialists, not the Communists, who were doing something for world Communism, [01:47:00] tactics and so forth.

Then the former Christian Democrats who had come along, and they basically ... Their position was essentially, "All the stuff we were trying to do as Christian Democrats we're still very much for, but it's been undercut, the money and the power has basically said that we're having symbolic laws. You pass the law but it's never really going to go into effect." This was the kind of thing.

So you had this kind of group. [01:47:30] And again, Fidel Castro came to visit and I've read the Church Committee reports, I've read some books about Kissinger and Nixon. They were just appalled. The Chileans could stage ... The right-wing Chileans were perfectly capable of staging their own coup. I always get a little edgy blaming everything on the CIA, as if the Chileans weren't smart enough to do [01:48:00] it. They were quite smart enough to do it, thank you. But on the other hand, it was nice to know that if they did it, the CIA was waiting there with goodies, that there were all kinds of rewards for doing this. So we had that at the end of the thing.

REEVES      What about your cultural experience in Chile, or [crosstalk 01:48:22]

MACAULAY:      Well, of course the Chileans were fascinated with Americans but [01:48:30] were all against the war in Vietnam. The Canadians loved to ... They would put maple leaf flags as little patches on their jacket. "Don't blame me for Vietnam," is what that was saying. Culturally, you had that as a situation. Fascinating country. I quite like Chileans. In many ways it reminded so [01:49:00] much of my Californian upbringing. If you go from Santiago to Valparaiso, the sea port, which is a good ... That's a direct, almost straight line east-west, that's as far south of the equator as Santa Barbara is north of the equator, so the conditions are very much the same.

You'll see palm trees in both places, you'll see eucalyptus trees in both places, [01:49:30] all coming from Australia. The prevailing shipping route was a triangle because of the nature of the winds. From Australia, if you wanted to go to the United States, you'd sail directly ... that would've been east, and you'd wind up somewhere in Chile and then you would go up the Latin American coast. So you had this exchange relatively early on, and of course if you go to California you see eucalyptus trees everywhere. [01:50:00] Well, there, that's an Australian native tree. That comes out as well. The other thing was when I grew up in Southern California, my dad had an acre of ground behind our house. Name a fruit tree, we had at least one of them, and a large victory garden through World War II. So the idea of fresh fruits and vegetables was something I grew up with that was very nice. If you went [01:50:30] to a Chilean mercado, oh my, the fruits and vegetables that were available. They were just wonderful. Not these things picked green as a rock, which might ripen if you're lucky. They were tree and vine ripened and all the rest.

Of course, the country visually is very impressive. The Andes make the Rockies look like hills. They are incredible [01:51:00] from the spine. In a way, the geography, it's a little bit like the United States, only flipped the other way around because if you get over the Andes Mountains, you're in the great flatlands. My daughter lives in Colorado Springs, and from her

house, you turn one way and you see the mountains, turn the other way, you see the great flatlands. It's very similar kind of [01:51:30] thing. Rich agricultural area and all the rest.

REEVES: Is there anything more you want to say about Chile before we get you back here?

MACAULAY: Not particularly. All in all, it wound up totally unsuccessful because General Pinochet doesn't need the law. Actually, a friend of mine taught constitutional law at the University of Chile in Santiago [01:52:00] after the coup, and he made the point that if you're dealing with a authoritarian dictator, the way to teach constitutional law is be very formal. Read what's in the books, and don't talk about how it's being implemented out there. The Surgeon General has found that hazardous to your health.

It was a society [01:52:30] where bodies were floating down the Mapocho River. We have to ... The violence. And it was a society that was very proud that it wasn't that way. This is the whole notion Allende ran for office and won an election. The Chilean military is not ... Their joke about Bolivia was it was a long playing record, 33-1/3 revolutions per minute. [01:53:00] That's the Chilean people Bolivia. "We're not like that."

So when they struck, then they struck. They blew up the retired general who had opposed the coup. He was the head of the armed forces and did not want them to do it. He was pushed out when they were going to do this thing. He and his wife moved to Buenos Aires. He went [01:53:30] and started his car and bam, the car blew up killing the general and his wife. Allende's ambassador to the United States, after the coup, was driving in Washington, D.C., and bam, the car blew up. The Gestapo of General Pinochet managed to go to foreign capitals to kill people, and they did plenty in their own. It was awful kind of thing.

[01:54:00] I certainly just felt so sad about it. But the point is all the work that I had done pretty much wiped out. I think in the long run, Chilean traditions triumphed. General Pinochet decided to run in an election and got voted out much to his shock and surprise. Can you imagine Adolph [01:54:30] Hitler getting voted out? It's one of the things. But anyway. I think we've pretty much done this.

We got, the family got a great deal out of it. I got a great deal out of it in terms of seeing another legal system. Seeing what lawyers did in that legal system, that was very useful for me. Seeing the way justice was rationed there [01:55:00] as compared to here. They were very proud of their environmental protection law, and three people in Santiago were the total enforcement staff for the country that size. At that point, you're saying we have a very pretty law, but it's not going to get in anyone's way. So I learned a lot that way.

We came back. My wife had run into the problem ... She got [01:55:30] a PhD. She was in social psychology, which given the bias of the department at Madison at the time, that wasn't real. Because you couldn't run experiments, you weren't scientific enough. So that was always going to be a problem. Finding something for her to [01:56:00] do with her PhD was very frustrating. She had all kinds of soft money jobs after she got the PhD for about the five years where we went to Chile.

We got back here. I got a letter while we were in Santiago. Red Schwartz was a sociologist who had been at Northwestern, at Yale, and he was hired by the law school in Buffalo to be a [01:56:30] dean. He had never been to a law school in his life, but hung around. He was trying to create a very different law school and sent me a letter recruiting me to come join it naming names of people who he had already hired and so forth. The thing in the letter that interests me was that [Jackie 01:56:57] will have an assistant [01:57:00] professorship slot in the psychology department.

When we came back here, I took a visiting appointment there. I wanted to make sure that the grass was greener on the other side and this. We went off to Buffalo, and we discovered there was no assistant professorship, there was no office in psychology, there was no contact with anyone [01:57:30] in psychology for her. We finally went to him with a copy of his letter, and he said, "Oh, I forgot." That was one of the low moments in our family history. I liked the people at Buffalo. He had recruited a lot of ... They had good plans and good things on this.

It was a fascinating year. Michael [01:58:00] Tilson Thomas was the conductor of the Buffalo Symphony. Now in San Francisco, of course, but in this day ... So you got quite ambitious programs to go there. The Albright-Knox Art Gallery was really close to our home. It was really something to see. The law school then was downtown. This [01:58:30] was before it built a building on their campus and moved out. The building it was in was designed by Louis Sullivan, so we were in a Sullivan building from turn of the century and such. That was kind of fascinating and that sort of thing.

On the other hand, given that sort of the reason for being there was to do something for Jackie, I sort of learned what being depressed was. [01:59:00] I found that I didn't want to go to the law school. I went, and I taught my classes. I was a good soldier, but driving from our house to the law school, every block we got closer, the less eager I was. How can I get to my office making sure I don't run into Red Schwartz? That was one of the kinds of things.

Jackie got all involved in the big feminist [01:59:30] group who helped her morale a good deal. This was the ... What was the song? "I am woman, hear me roar." This is 1972 and all the rest. I still remember not getting to the party for an election before it was announced that McGovern had lost so badly. This kind of thing. That was life in Buffalo.

REEVES: [02:00:00] So then that must have brought up back here the spring of '70s ... Was it like a '72, '73 [crosstalk 02:00:08]

MACAULAY: It was a full academic year, and then we came back in the summer.

REEVES: We're approaching an hour.

MACAULAY: Oh, okay.

REEVES: Part of my mind thinks that this might be a good ... You had your year [02:00:30] in Buffalo and now you're back.

MACAULAY: All right, okay.

REEVES: But I also want to make sure if there are things about this time period now, which I think we've covered about 10 years, or at least through the early '70s-

MACAULAY: Right, right.

REEVES: That you feel important to say before we continue to advance.

MACAULAY: I have to ... An important part of history. Joel Handler was here at Madison and he wrote me a letter which was very nice that I had to come back to Madison. I shouldn't stay in Buffalo, and [02:01:00] he was listing the reasons, and this sort of thing. One of them, one of the reasons was now in Madison we have restaurants. And it was the first Ovens of Brittany that had opened. That's what he was referring to. But I wrote across the bottom of the letter, and sent it back to him, "You makes the joke." Because I had ... Restaurants for me were my experience in San Francisco, [02:01:30] being on committees and going to New York, and stuff like that, and I had the theory that in Madison, there was one central kitchen, and that people on roller skates brought the food from the central kitchen because the menu was the same every place.

REEVES: So we might end up talking about that because it does ... Well, I've been told anyway that Madison does change in terms [02:02:00] of culinary and [crosstalk 02:02:03]

MACAULAY: Oh, my lord. Now we had lots of good food to eat, but it was very much ... Generally was wives. There were a few men that cooked, but usually it was kind of ... Faculty-wise as a group, you entertained at dinner and you did some cooking at that point, and stuff not available in any Madison restaurant at that point. So you had some of this. But you wouldn't expect [02:02:30] it when you went out.

REEVES: Okay.

MACAULAY: That kind of thing. The town did draw entertainers. You'd get a parade of popular entertainers. You'd get classical entertainers and so forth. So that always was nice, that people would come through. I remember watching Pete Seeger at the Union Theater and spraining [02:03:00] my ankle because the seats were so close together. I think what had happened was my foot had gone to sleep and somebody was in a hurry to get out at an intermission, and I took a side step, and just rolled over on the ankle. Oh. And I remember Seeger sang a work song where he had an ax, a real live breathing ax which he whacked away on the floor of the Union Theater. You [02:03:30] know, Lead Belly. I have a hammer and one of these kinds of things.

So I remember seeing Count Basie and his orchestra at the Union Theater. And then I also remember seeing the Philadelphia Symphony out at the cow barns. That was before we converted the theater downtown into a civic center, and there just wasn't space for a full symphony orchestra [02:04:00] anyplace else. And people were joking, "Well what you suppose

it smelled like in Vienna when Beethoven wrote the symphony?" And we thought it probably smelled the same way.

REEVES: Right, right. Well, Stewart. I think this'll wrap it up for today. So this concludes the second interview with Stewart Macaulay. Thank you so much.

REEVES: All right, so today is, yep, today is April 22, 2016. This is now the third interview with Stewart Macaulay. We are here in the Law [02:04:30] School, actually the Law Library part of the Law School, and my name is Troy Reeves. Stewart, as we've done for all the interviews, if you could say your name and spell your last name.

MACAULAY: All right, it's Stewart Macaulay - M-a-c-a-u-l-a-y.

REEVES: Excellent. I'm going to get this just a little closer to you and turn it up just a touch. So when we last left off, you'd basically returned from Chile [02:04:55] but then did you go to Buff ... I can't remember if you went to Buffalo after Chile. [02:04:57]

MACAULAY: Yes. We were back here a semester. [02:05:00] We returned from Chile [02:05:04] in January.

REEVES: Okay.

MACAULAY: So we were here the second semester, and then went off to Buffalo, and then came back from Buffalo, and also, of course, the thing about coming back from Buffalo is that Marc Galanter, who was [02:05:30] an extremely famous law professor, and Bob Gordon, both were on the Buffalo faculty, and I came back. And I can't say I did it on purpose, but I did call to our hiring committee's attention that there were two rather fine fellows at Buffalo, and then they came here, and then David Trubek had left Yale and he arrives back here. So this is all part of the [02:06:00] change in the law school in the sense of adding more people, Law and Society, and increased the interest in the Law and Society.

David becomes very interested in what became called Critical Legal Studies, and this essentially looking at the arguments made, and really how they're used to cover up various sorts of things. I was a fellow traveler of Critical Legal Studies, but I always [02:06:30] wanted to be a little more empirical than they wanted to. They wanted to deal with the nature of arguments and this sort of thing. They were still law professors. They were quite critical of seeking rights that didn't have much meaning. This was ... I mean, we'd gone through a period where the world was going to change and be wonderful, because first African-Americans and then consumers and employees, all sorts of people got rights. And of course, [02:07:00] the rights made a difference, but they didn't completely change day to night and so on. So there were a lot of people disappointed with what had been achieved, and such.

So that's the beginnings of the '70s, is they ... This sort of thing. And David knew lots of people, so it used to be the speaker of the afternoon, it seemed [02:07:30] like. That's exaggerating for effect, but all kinds of people. We brought all kinds of people through and

changed a little bit of the direction here, just in the sense that we had a lot more things to consider and be involved in.

REEVES: Mm-hmm. So when you got back from Buffalo ... And that was just a visiting teaching-

MACAULAY: It was a visiting year, although it certainly, on both sides I think, the thought was, [02:08:00] I might say. So came back and-

REEVES: So what were you ... Were you still teaching the same courses that you had started with? Were you picking up any new courses?

MACAULAY: Essentially ... It's hard to answer your question because I was ... The names of the courses remained the same, but [02:08:30] the content of the courses shifted a good deal. So really it was the search for what my Modern Contracts course would be and trying to consider. One of the grand problems in the ... You go to law school and you take contracts towards criminal law, personal property, this cluster. And they have kind of a content that goes back, and it's sort of the canon ... These things that you have to learn to [02:09:00] be a lawyer.

Now there's some truth to that, but on the other hand, lawyers practice law in the here and now, and there's got to be more to it than kind of a history of the law and the British Industrial Revolution. I mean, 1860 cases will carry you so far, and you need to do a little bit more. So really a lot of what I was trying to do was take the sorts of things that I'd gotten out of my [02:09:30] research as to what business practices related to contract were, and ask, "Well, how did that affect what we taught in contracts course?"

I tended to always be very questioning of the grand cases that everybody taught in contracts courses. I mean, my question always was, "Well, you know, why do we think it's still alive?" Because one of the things about contracts [02:10:00] is insofar as you're dealing with business, if what the courts do doesn't suit those who are involved in the law and business, well you change your contracts. So potentially every contracts case is a point in history, but then people can react to it. If we don't follow the reactions [02:10:30] it's kind of misleading history.

So I was involved in that sort of thing. Again, Lawrence Freedman and I had put together a law and behavioral sciences, sociology of law in society, whatever phrase you want to use for it, and essential the short hand is "let's look at law as [02:11:00] delivered."

REEVES: So I would guess in the case of that class that was always changing?

MACAULAY: That changes a great deal and when Lawrence and I put together our first materials I was at the Center for Advanced Study and he was visiting Stanford Law School, and we had to really search for materials and use things that [02:11:30] weren't exactly what we wanted. By the time you get up into the 70's the field is suddenly becoming a growing field. We have the law and society review, we have more and more articles appearing in law reviews, which just gives you so much more. Reading and chronicling and deciding what to go into the

course and what shouldn't go into the course. Is this going to be the main article [02:12:00] or is this something just to present to students, or is it just going to be a note?

There was judgments and all those kinds of things to make. So I was, for a long time, involved in that. Well I was involved in that certainly up until the 2007 last edition of the book. That was a constant.

So we did that and had that going on.

REEVES: [02:12:30] Were those your two primary courses?

MACAULAY: Yeah, but contracts here was ... There's 'Contracts I' and 'Contracts II'. You have the introductory contracts course and then you have the advanced course. So there were really three courses that I taught.

Now when we got back during the 70's I taught a [02:13:00] seminar with my wife who had a PhD in social psychology, psychology in the law, and we used materials by Wallace Loh who was then a professor at the University of Washington law school, but he had a PhD in psychology. I learned a great deal out of it because I had both Wally's materials and Jackie's comments on certain sort of things. We [02:13:30] did a number of things of that sort.

REEVES: Part of what we've been doing here is talking not only about your life but also your wife's.

MACAULAY: Well, but it's so mixed together. She was a professional who was dealing with things that at least overlapped with what I dealt with and she always was somewhat interested in what I was doing.

REEVES: I guess my question is though, was this psychology in [02:14:00] the law class, from what you know of her, was that something that led to her getting a law degree?

MACAULAY: Probably. It probably was a factor, but she started off ... She got involved in all kinds of causes and they partly related to the university because the university's record on affirmative action for women was a joke. [02:14:30] If you went into some of the fields, and she did things like she would look at the statistics the university was submitting to the federal government because we had to have an affirmative action program to get federal grants. And so she started reading the submissions and her line was "It would be nice if the University of Wisconsin could submit statistics that would pass [02:15:00] in one of its courses and not get an 'F.'" That was a zinger that not all administrators loved.

There were lots and lots of stories of out and out discrimination. A debate staged by professors in one of the sciences for their graduate students "Why can't women do science? Is it genetic or cultural?" [02:15:30] That was one of them. And of course, women are running all their laboratories at this point. She thought it was so hysterical because "if they can't do science then you're publishing a lot of stuff based on this incompetence so what does that make you?" Sexist, that's what it makes you.

No it was true that there were lots of fields that no woman need apply, and she got involved [02:16:00] in that. And so that too became part of the whole background of these things. And also she was in a sense a generation too soon because the opportunities for women to do things.

Now we always had the problem of ... We did go to Buffalo on the assumption there would be two [02:16:30] jobs, and there weren't two jobs so we came back. If she was going to live in Madison the places she could teach were quite limited. She worked in the Poverty Institute, she did a number of things like that. And then finally, the way she told the story and I know she was [02:17:00] quite able to tell a good story to have some fun so we'll put it that way, was; Her friends kept telling her she ought to go to law school because she was practicing law. She was helping people who had problems with affirmative action, sex discrimination, and so forth. She knew more about law schools than most having been around them for a long time and she decided [02:17:30] to take the law school aptitude test to shut everybody up, she would do poorly, and therefore there wouldn't be anything.

And of course she aced the darn thing and she could have gone anywhere, and then she ran into the fact that I was a University of Wisconsin professor and if you want to maximize income that's a very bad decision is to become a University of Wisconsin professor. No matter what people say it isn't the way to become Mitt Romney or [02:18:00] Donald Trump for sure. We had two kids in college so when she passed the exam that meant she came here because the thought of going off to another law school was that we couldn't financial bring that off.

REEVES: And does that mean you taught her in Contracts?

MACAULAY: No. No. We worked very hard with one [02:18:30] of the people on the academic staff, was the person who did the allocating which section of which course people got into, and he was a friend of mine so Jackie was not going to take my classes. Although she got the highest grade in her Contracts course and she got a lot of teasing as to how she [02:19:00] could bring that off and stuff.

REEVES: Can I ask one more question about your teaching, and that's if you've thought about or considered what your style of teaching was and if you have, what style?

MACAULAY: What I'm trying to say is I [02:19:30] went through Stanford Law School at a time that we're still talking about the Law School Socratic Method. And the Law School Socratic Method of course was education by humiliation. And that strikes me as bad psychology. I hated it. "Mr. Macaulay that may be the stupidest answer I've heard in 35 years of teaching. Now would you like to try thinking?" I mean [02:20:00] I'm quoting a Stanford professor there, I'm not making that up. So that style. I always joked I owe a lot to the Stanford Law School in teaching me how to teach; whatever they did I wouldn't do. Which was one of these things.

So lecturing, but always trying to raise lots of questions, which I didn't [02:20:30] see that I had to answer; to be thought about and pushed. Or very often, it would be answered, but it wouldn't be answered today. See how all this all goes together, because this comes together

down the lines. Now the teaching materials we used were still a casebook; you got a whole bunch of cases and statutes and quotes from articles and such. [02:21:00] You didn't get a thing to master, you got the basis for some things to think about and discuss. And so we tried to push people into thinking, but always coming back to what difference does it make? To whom? When? How?

And again, this is part of the empirical research I'd done, trying to see law as a tool [02:21:30] towards either avoiding or solving problems. And it's obvious you're not going to spend a million dollars to get a legal judgment for a dollar 98 cents. And that simple point never was mentioned at the Stanford Law School to us. Law is rationed by cost, which may be a very unfair way to ration it because, again, Mitt Romney and Donald [02:22:00] Trump can afford a lot more legal help than most of us. And so we do this. But, it does lead, if you're looking and thinking about the consequences of particular rules, their particular rules are going to be filtered through a system where they're only going to be applied in certain types of cases but not other transactions.

If you create lots of individual rates for, say, consumers, we have to back off and say, [02:22:30] 'Well wait a minute, when can these be used?' Again, just the taking a day off from work to go to court for many people, an awful lot would have to be involved to make that a sensible kind of thing.

So we're trying always to push this sort of thing. Always trying to push the ideal of law; what at least in our society that [02:23:00] we say it's for, versus what it looks like when delivered. And its impact tends to be indirect. [inaudible 02:23:13].

REEVES        So by the 70s and even into the 80s, teaching law this way, sort of empirical, with the [inaudible 02:23:25] aspect of empiricism, were more people doing that?

MACAULAY:        [02:23:30] Yeah. More people were doing, but it certainly never was the majority by any means. But it was a known kind of thing. Now what happens is really coming up in 80s, we had a contracts group here; people teaching contracts and John Kidwell, Bill Whitford, and I were the ones [02:24:00] who went all through the long story, but there were lots of other people involved, and we finally came out with a published book I think in 1994. We had had in house published, the copy shop of the law school had published the materials for teaching contracts for at least ten years, maybe more. I'd have to count up from when we started. [02:24:30] And that very much was a work in progress and trial and error and so forth.

And that took a great deal of time. We spent a lot of time trying to get ... It wasn't the sort of thing we could just go to a publisher and say, 'We're going to use Jones on contracts.' It took a lot of work. But there were a lot of us working on it so it wasn't all my doing by any means.

REEVES        [02:25:00] Were these all folks from this law school?

MACAULAY:        Oh yeah. Now we later bring in people from elsewhere, but that's in the later development of the whole thing.

REEVES        Okay. So I know a couple other things I wanted to talk about from this time period. One was service. I read something in one of your documents and I think you had it noted for the 1980s that you had done some work [02:25:30] for maybe a national organization. The acronym, I can't ...

MACAULAY:        Well, let's see what you're after.

REEVES        AALS. No, I'm President of Law and Society Association.

MACAULAY:        Well, all right. The first thing that's here, these things [02:26:00] ... The American Law Institute puts out a book that attempts to bring together and state in a rational form the common law of contracts. Well, it states a whole bunch of fields, but contracts was one. They always work with a reporter, that's the person that has to do the first draft, an advisory committee, and then goes up and it [02:26:30] gets vetted and this kind of thing. In many ways, I was a very funny person to put on this very doctrinal kind of thing. In some ways, it was very good for me because it brought me back to rules and things like that and I tried to deal with that.

So that was a 1962 to 1979. That was a long period. You weren't paid. I always said the pay was for me, the [02:27:00] reporter was Allan Farnsworth of the Colombian Law School, so the advisory committee meetings were held in New York and after dinner, I would go down to the village and see jazz artists. I'm a great jazz fan. Is this going to be Thelonious Monk this thing? A little John Coltrane? Something like this. That was very nice, thank you. I enjoyed that part.

So I was involved writing reports for [02:27:30] them or ... You read the work and you commented on it and that sort of thing. So I did that. Now, I also was on, a couple of times, at the advisory panel of the National Science Foundation. It had a Law and Sociology program and people applied for money and [02:28:00] our panel made recommendations as to who should get the money. And we did that. So that again is a sort of, this kind of thing. The Law and Society Association is the developing professional association for people going down that path. And if you look at my vida, you'll see that at I, a couple of times on the board of trustees, and then was elected [02:28:30] president in the mid 80s. In those days, they had a president-elect, then you were president, and then you were immediate past president. So they kept you around.

This was the weirdest thing in many ways because we had to ... Well, we were going broke and [02:29:00] so while my father was an accountant, that wasn't my calling and suddenly I had to kind of help out and figure out what we could do. But part of it we were sending journals to people who hadn't paid dues. It was a voluntary organization that needed a little shaping up. You can't do that unless you're very wealthy and we weren't very wealthy. [02:29:30] So we did a lot of that. We had to find a new executive director and I went on a search and did part of that. These sorts of things. You give an address at the meetings. This kind of thing.

REEVES        So this time period, again, the 70s and the 80s, we just talked about your service to sort of the larger legal community, but what about service, if any, to the campus community?

MACAULAY: Well, [02:30:00] I don't have the dates written down here, but I was on the ... What's it? Social Studies Divisional Committee that has to sign off on tenure for people. I served on that. I served on the research committee at the graduate school. I was on a committee of the whole University of Wisconsin, not just the Madison campus, [02:30:30] that went over the tenure rules and created the tenure rules for the then, new University of Wisconsin Green Bay.

REEVES: That was a system wide committee?

MACAULAY: Yeah, yeah.

REEVES: Okay.

MACAULAY: Yeah, you do those things.

REEVES: Were those things that you did because somebody asked you?

MACAULAY: Yeah. Oh, yeah. This is the kind of thing that was part of the [02:31:00] job I figured and of course, all kinds of law school committees. I was chair of the tenure committee at a law school. I was certainly on the committee that looked for new professors, hiring committee. You get those things and you do your share.

REEVES: Thank you for [02:31:30] that. I did want to ask too about ... You've already mentioned a couple of them, but if there are any other publications from this mid-career time period, 70s and 80s.

MACAULAY: There are a couple.

REEVES: I know you have a list here.

MACAULAY: Yeah, well part of it is to keep straight when what came out. Well, there's lawyers and [02:32:00] consumer protection laws and empirical study, that's 1979. This was a case of, we got the Magnuson-Moss Warranty Act. We got a whole bunch of states were put into. This is the high point of Ralph Nader. We're going to solve the problems and give rights to consumers and do all kinds of things. I started asking lawyers about what they were doing with all these new [02:32:30] laws that benefited consumers. I discovered, if you were talking about lawyers from say, Foley & Lardner in Milwaukee, which represents corporations, they know about these laws.

What they were doing were trying to deal with them as they could in terms of disclosures and whatever and changing their contracts and doing these kind of ... If you talked about lawyers that might handle individual cases, most of them had heard [02:33:00] only vaguely about the laws and they, "Yeah. There's something called Magnuson-Moss," but they didn't know a huge amount about it. I was always laughing because I didn't know that I was doing an empirical study or I was doing some continuing education of the bar, because the answer rather quickly came down to, we solved the [02:33:30] problems of consumers with businesses. The few that they

would get I mean, because you had to have again, lawyers cost money and if you've got a \$1.98 purchase that went wrong, well you're not going to sue anybody about it.

More important kinds of things, we solved these, but we don't do it by going and bringing lawsuits. It turns out that I described the position of lawyers and small [02:34:00] to medium sized cities in Wisconsin, they just know people, and a telephone call to somebody you know is probably more likely to do something there for you. I was getting a picture of this role of lawyers and the difficulties that ... This image that while you have this cause of action, well, even for automobiles it's [02:34:30] ... I don't know. How much money could you invest trying to get something back for your Volkswagen Diesel right now? Think about that.

Now, we're hoping the newspapers say that Volkswagen may buy the cars back, but if you had to as an individual try to handle that on one case. The lawyers were involved, but they tended not [02:35:00] to be looking at what the [commas 02:35:03] meant in construing the statute. They were involved in that they could make phone calls or they could go use state agencies. Very often, one of the interesting things was finding that the amount that the ... Lawyers might make the call themselves or they might write the script for you to negotiate. [inaudible 02:35:28] that you [02:35:30] could do for a person in this. I quite enjoyed that piece. That's '79.

Then Jackie and I together wrote this adoption for Black children, expert discretion, and this is the whole issue of should a White parent ever adopt a Black child? [02:36:00] Essentially, social workers were claiming scientific expertise and I think our paper raises ... This sounds like a situation where there's not a lot of science and there's some good judgment and a lot of reflecting the crazy norms about race in the United States that were involved in the [02:36:30] whole thing.

REEVES: They were arguing science as a reason not to have inter-racial adoption?

MACAULAY: Right, right. Now, of course part of it is that it became an issue with Blacks. That it was sort of, our children are being snatched away from us kind of thing. Part of the problem of course in all of this is, as compared to what? [02:37:00] After all, I suppose you could say that the President of the United States was raised by a White grandmother after all. If you think about it. We did have a good time putting that one together because it was one of these things, what do we know scientifically? What are our practices? Then, [02:37:30] just all of the normative kinds of arguments. A lot of people at each other's throats. It was not dispassionate about these things.

REEVES: I see just for my own personal thing here in '87, you wrote a lesson of, images of law in everyday life, to lessons of school, entertainment, and in spectator sports.

MACAULAY: That was my talk as president [02:38:00] of the Law and Society Association. One of the things, if you're going to give a talk at lunch with a bunch of people, you look for a hook to hang it on that might interest them in these kinds of things. One of the things that I tried to do was go, "What do we know about what people learn in school about law?" Of course, the answer is directly not much. Now, it's changed a little bit, [02:38:30] but you tend to

learn things about the level of the United States is a Federal system and so there are the states. The Federal government is divided into the executive, the legislature, and the judicial branch. This kind of thing.

Really, it's surprising how little you do learn about law in high [02:39:00] schools and so on. Now, on the other hand, there's a whole level of learning about complying with rules, evading doing things. In fact, one of now ex-wife of one of my colleagues got her PhD here studying West High School, although it gets another name in the book she wrote about it. Her title is *Playing School*. [02:39:30] Learning how little you can do to get by and learning how to avoid things you don't want to do. This creative compliance with rules. It was fascinating these kinds of things. Well, and I raise in the paper, does this carry over to how we cope with tax, how we cope with driving [02:40:00] rules and regulations? You know, what are our notions about compliance and where do we learn them? And you know, if a yellow light means speed up, doesn't it? Isn't that the ... That's the empirical meaning of it, whatever it says in that little booklet they give you and so forth.

But we've got that. Then you get entertainment, and it's fascinating how inaccurate, say, television programs are [02:40:30] about what the legal system looks like. Even the ones that purport to be inside, you know, these kind ... I think one of the ones, the stories I like, is the argument that ... Is it *CSI*? Is that the one that was all about having the scientific labs that did everything? I think that's right. Does that have an effect on juries if they don't have enough scientific evidence given to them? Because [02:41:00] the legal system can't afford to having quite that level of science in many places, and so forth.

Well, we're looking at what you would get out of this, and then there's sports. What does sports teach about compliance with rules and so forth? [inaudible 02:41:21] We've got this wonderful, and [02:41:30] we do raise it, we have this wonderful thing, we have our great universities, which are teaching values and all this kinds of things. What values do they teach over at Camp Randall Stadium? "Don't get caught"? Well, and after all, think of the scandals that come out of ... USC getting caught with assistant football coaches writing [02:42:00] papers for the key players, these guys that ... I always thought, if you're going to cheat, I'd at least get a little better offer on paper, perhaps. That's not kind to assistant football coaches, but ...

But that's what this article tried to draw on. What do we know about this stuff? Because it really comes back to, for most people, law is a very unusual thing. I mean, most [02:42:30] of us manage to get through life without suing anyone or anyone suing us. Most of us might get a traffic ticket but we don't go to jail for something. Most. For most people, filing the income tax is not an exercise in applying the tax law, it's fill-in-the-blanks and it's pretty simple. I mean, if you were thinking of Donald Trump's taxes versus most of [02:43:00] us ... Most people don't even itemize deductions, for heaven's sakes. It's, you've got a form and you can waste an evening on it and so forth. But how many people really sort of estimate [inaudible 02:43:20] have records for things? "Yeah, I spent a lot of a ... I spent some money on this. Didn't we give some money to the Red Cross?"

[02:43:30] So that's what that paper attempts to deal with, and of course it has amusing parts to it, we hope. I got a few laughs, so you have to ...

REEVES Right.

MACAULAY: It is a talk.

REEVES Maybe one more thing this time, and that was, I noticed in your CV that after Chile, at least three or four times in the '70s and '80s, you continued to go abroad.

MACAULAY: [02:44:00] Oh, yeah. What happened was, when I was a pure contracts teacher, I was envious of all my friends who got all these wonderful foreign trips. Because contract law is very related to the jurisdiction. I mean, the people abroad weren't all that interested in this kind of thing. Once I became, entered into the law and society business, why, then I got invited abroad, and that was nice. There were a number [02:44:30] of chances to go participate in conferences, give papers, and these kinds of things.

REEVES It says, for example, "Visitor for the Centre of Socio-Legal Studies, Oxford. Scholar in Residence, Western Australia. Visiting Scholar." Are these long-ish term?

MACAULAY: Those are ... The Oxford thing, I think, [02:45:00] was a month, and the thing in Perth was like six weeks. But again, hitting our summer on that. You know, a lot of others were going to a conference, that kind of thing.

REEVES So at this point, was it just you and Jackie going to these things?

MACAULAY: Yeah, yeah. She would come when she could. Now, she goes to law school and graduates in 1983, and [02:45:30] of course she has a whole practice, and so she doesn't just pick up and take off. I still remember going to a conference in Lisbon. We get off the airplane, make it to the hotel, we're tired and all the rest. She's on the long distance phone, calling back to Madison. It was hardly, you know, a life in which you could just put everything down and go have a vacation, and that.

REEVES Right. Right. [02:46:00] Although I guess in the '70s you still had a few children at home, at least.

MACAULAY: Well, yeah, yeah. But ...

REEVES So they might come with you too on some of these ...

MACAULAY: But not these kinds of trips.

REEVES Okay.

MACAULAY: Of course, they were in school. They were doing all their things and so on. The children abroad was the Chilean experience. That was the big one from that standpoint. [02:46:30] Other than that, we went off and did things. And now, Jackie didn't go every time with me, because there were some that she just ... things were going on here in her law practice,

and so she wasn't free. [crosstalk 02:46:45] But where she could, of course, that was much more fun.

REEVES Right. So once Jackie started working full-time at her law practice, it had to have made for a busy, just a sort of busy family experience?

MACAULAY: Busy family experience, [02:47:00] although not too long. We had ... The children were either in college or out of college, and off on these sorts of things. This comes, you know, a few years after she gets out of law school and all of that. In fact, I think of the '80s essentially as [02:47:30] ... It was on the world's weirdest schedule from that standpoint. She still was an academic at heart, you know. She had a PhD and she'd been through law school and all that kind of thing.

And she found that she dealt with clients and going to court and negotiating with other lawyers and stuff during the day, but once the secretaries went home and the phones got turned off, there was a line if you [02:48:00] knew it, but ... And that's when she could get down and, if she had to write a brief or this sort of thing, that's when she wanted to do it. So I would meet her for dinner at 9:30, 10 o'clock, something like this, because that was that prized time when she could be all alone and actually write something. Because she cared about putting verbs in the sentences, and not all lawyers do. And she cared about [02:48:30] not having a lot of legal garbage in the ... You know, you ...

REEVES And I'm guessing overall cared for the people who she represented.

MACAULAY: Oh, tremendously. Tremendously. Now, I mean, the Social Justice Center on Williamson Street has a small art gallery where they show artists with causes and this kind of thing, and that's the Jackie Macaulay Gallery. It's named after her. [02:49:00] The Public Interest Law Foundation here at the law school, she founded that when she was a law student with the guy who was the law student body association president. Tried to raise money so that you could find ways that students in the summers between first and second and second and third year of law school can go off and do things like work for the ACLU or work [02:49:30] for various kinds of causes and these kinds of things. Well, if ... They have an award for the student who does the best in it. That's the Jackie Macaulay Award. So a lot of this is, she was ... She had quite a reputation as a lawyer who worked for clients and was ...

REEVES That actually leads to one thing I wanted to ask too, about service. And that's, you [02:50:00] know, we talked about it in the legal system, we talked about it on campus, but you specifically and we're talking about Jackie's work in the community, what sort of work were you doing in the community?

MACAULAY: I didn't do very much at all in a way, I took care of things so she could. Now at that stage, what happens is much later after Jackie's death and we're talking about in the [02:50:30] ... I don't know like 2004 I become on the board of Frank Lloyd Wright Wisconsin, which owns a block full of Frank Lloyd Wright houses in Milwaukee and these were houses put up as economical housing, this was right as the progressive tries to solve societies problems and such. Then we staged Wright and Like which is we move to a different Wisconsin city

[02:51:00] each year and the show Wright buildings and it's Wright and Like so it may be Wright student buildings, or even in Milwaukee we used the Pabst Mansion as what Wright was against. It was certainly was an example of what he was against. I was on the board of that and then I just recently been put on the board of Frank Lloyd Wright School of Architecture.

This is something, [02:51:30] I can do that kind of thing. Now ... I've known all kinds of people who were engaged in politics and certainly written checks for them and I even sometimes go on to meetings, rallies, things of that sort. You do and ...

REEVES: And one more thing, so you talked [02:52:00] earlier about coming back, getting enticed to come back from Buffalo because there were restaurants here and that's-

MACAULAY: Oh that-

REEVES: But I'm wondering if by the, if we're talking about this in the 70's and 80's by now the 80's and maybe even the early 90's, the food scene in Madison the social scene for that in Madison.

MACAULAY: Well by that time you have all kinds of restaurants and such, I mean that more as a joke, that [02:52:30] sort of thing. Remember too we came back always one of things, we had a rather large anchor, we have a house that was designed by John Howe who was Frank Lloyd Wright's chief draftsman. It's ... A very Wright like house. Shaped like a parallelogram coming down a hillside and so forth. Jackie's father was the [02:53:00] ... General manager of SC Johnson and Sons in Racine, and he was the one that persuaded Mr. Johnson to hire Frank Lloyd Wright to build the administration building, which is the great Johnson administration building in the North scene. When she was 8 years old she argued with Frank Lloyd Wright, she wanted to go to war against Hitler, she'd been reading Time Magazine and he was a pacifist, but he liked her.

[02:53:30] We always had that kind of tie and we built the house, we went out to Tallahassee in 62, which would be what 5 years after Wright died? 4 years? Howe had been his chief draftsman from 1936 to his death and was obviously quite [02:54:00] fluent in the Wright vocabulary of architecture. That was a bit of an anchor to Madison, a reason to be around and to come back and do these sorts of things. Now again, we had been certainly willing to look into going to Buffalo, which would've meant having to sell the house and all the rest.

REEVES: Was that one really enticing offer if you will to leave Madison during [02:54:30] this time period?

MACAULAY: I had offers to go, well for example I had an offer to go visit Yale for a year, which I turned down. Simply I was in the middle of doing a couple projects of my own and we had kids in school here and all the rest, and that wasn't particularly, it wasn't a good time for it. I had [02:55:00] been invited to go to the Center For Advanced Study, had accepted that and then Stanford invited me to go teach contracts, and I had to turn that down. There were things like that but always was a problem of could we get 2 jobs, was it a good place for the kids, and these sorts of things. I was pretty committed to this place. We were different in good ways,

[02:55:30] very interested with law and society, it was very strong here. Kind of had a group of people who were working contracts like minded. Again, now that doesn't say that there weren't other good places that were possible, but it was going to take something rather special and ... I've always found Madison on balance and a wonderful place to spend a lifetime.

[02:56:00] Now I will say quickly, in March when you can see the weather going sideways I sometimes think of Southern California where I grew up.

REEVES: Mm-hmm (affirmative).

MACAULAY: I don't want to say that the ...

REEVES: Right. Well Stewart I want to thank you for your time today, this concludes the 3rd interview session with Stewart Macaulay.

MACAULAY: What year are we up to?

REEVES: We are in the 90's. So this the 4th interview with Stewart Macaulay, we're in a different [02:56:30] part of the law school library, but we are, or actually just at a law school now. My name is Troy Reeves with UW Mass and Oral History Program. Stewart if you could help us out by saying your name and spelling your last name.

MACAULAY: Stewart Macaulay. M A C A U L A Y.

REEVES: Great. Okay so when we left off we had gotten into the 90's I believe, so I think what we're going to try to do is maybe some topics today [02:57:00] that may or may not pertain to the decades, but they also might, and just some things, sort of a potpourri of things that I had that I wanted to ask.

MACAULAY: Fine.

REEVES: I noticed on your CV and resume that towards the end you had names in front of your professorship, which I think means you had endowed professorships.

MACAULAY: That's correct.

REEVES: So maybe we should start by since we don't know who will listen to this and what context, what does it mean to have an endowed professorship?

MACAULAY: For one thing it's an honor, [02:57:30] so we've got to take that into account. You're being recognized. I got a Hilldale professorship, which is an all university professorship. For a law professor to have his research recognized in the rest of the university is kind of nice because there are plenty of people in the university who think that lawyers don't do research, they just go out and mess up systems and things like this. [02:58:00] I'm joking about that, but I was very honored by that. They also, the nice thing about Hilldale professorship is you can name it yourself that is, and so I was the Malcolm Pittman Sharp Hilldale professor of the

University of Wisconsin, Madison. It has to be somebody who had some Wisconsin connection and some connection to your field. Sharp was an undergraduate at Wisconsin and [02:58:30] then was on the University of Wisconsin law faculty when he started. When I knew him he was a University of Chicago law professor. We've mentioned him in the interview from the days I was in Chicago and just starting out.

I got another professorship which was a law professorship, which comes up and basically gives you money for research, to go to meetings and things like that, then [02:59:00] again one more honor and so on. First they're nice that way, the other thing was Cliff Thompson was the dean of the law school, said that he learned that I was a Macaulay because I hoarded my research money whereas there were people who managed to, if they bought an ice cream cone would find a way to charge it to their professorship. [02:59:30] I was always saving it for doing things and was very fortunate because one of the big things I was involved with, 4 additions of the book on law and society. This was attempt to gather articles and treat them just as you do cases in a case book. That is we would have an article, we would have comments on it, we would have conflicting views from other fields, all kinds of [03:00:00] things. Our first edition came out and as we've mentioned before, in 1967. In those days, all you had to do was ask for permission to reprint an article. Maybe, they might ask \$20, or something like that. By the time we got to the 2007 book, they were asking \$500 to reprint articles. You really had to figure out what you were going to do. I spent a lot of what remained [03:00:30] of the money that had been in my professorships to just buy the rights so that we could put our 2007 version of the book, which I found ... It seemed to me, that was a wonderful use of the money. I was quite pleased. Now, I would like a world in which we didn't have all the extortion. The idea is you write articles for people to use. Of course, the publishers come around and do this.

Now, I should say quickly, to be fair, there were some publishers, once you explained what [03:01:00] you were using it for, would waive their fee, or would cut it in half, or do things like that. I should ... To be fair. Nevertheless, there were some that you just had, if you ... It meant that there were articles we otherwise couldn't have used, that we wanted to use, they were important to use for the book, but we had a way of getting ourselves out. I hired research assistants. There were projects that were worked on, and things of that sort. This was one of the places [03:01:30] where it was so nice to have that money, to get us so that we could actually produce the 2007, which essentially was the 4th edition of the book.

REEVES      Okay. Thank you. Just going down my list here, I noticed when I checked our records that there was one more update to the law school in the '90s. I don't know if it had an effect on you, or ...

MACAULAY:      Oh, yeah, because the problem was that we learned how much [03:02:00] nicer the law school was than many places in the rest of the university. They tore down a whole bunch of stuff. The law school, you were trying to teach classes with this large thing whacking against a sidewalk, trying to smash it. The building was having its own earthquakes. It was a little hard to teach a class. Then just clouds of dust everywhere. [03:02:30] We started off the semester assuming we could teach in the law school. We then were sent out for the leftover classrooms. The leftovers were something. My daughter was in ... She graduated in 1997. She was in the class most affected by all this.

She's always teased me that she wants to know how much people in her class donate to the law school. Most of them think they still have a bill, [03:03:00] which the law school owes them money through. She managed to find a hiding place in the Historical Society, and a little desk, lost way down in the shelves. She could just get away from it all and study, and this. I had joked for a long time that the best thing you could do for legal education in Wisconsin was to destroy the existing first-year classroom, [03:03:30] because the architect who did it just didn't get it. It was a fine room when you had ... The music school would bring in a jazz performance or a string quartet. That is, things going on.

Law school, you're supposed to discuss, you're supposed to call on students, you're supposed to do this. You could not hear. If I was sitting in the middle, I couldn't hear what the student over to one side was [03:04:00] saying, because the sound was all to come from the front. This was all explained to the clown who was the architect. Now, the theory that many of us had was engineers and lawyers always spar. This was someone getting back at lawyers. That would explain the design of the building. Well, I got my way. They actually did tear down that room, and built a classroom which I think is wonderful, that works beautifully, from that.

It had a patio, [03:04:30] and which was, again, the genius of this architect ... You see I'm not a great fan of the 1963 architect. That's just what you want. In the summer, it was grand, but how many months of the year do you ... Having an outdoor patio a nice little thing to have? It's now all enclosed in in a big atrium area, so that it might be used during most of the year, and such. It did that kind of thing. [03:05:00] The offices stayed the same. It did bring a lot of the clinical professors into the law school. They were in places downtown near the courts. That, I think, has been good for us, just to have the interaction with them, that at least, these are faces that you recognize. You put names to faces. I happen to know some of them rather well, so it's kind of nice having them. That was another part of the change to the building.

REEVES Did you know them because of the work that Jackie was doing, or did you just know [03:05:30] ...

MACAULAY: Well, for a whole bunch of reasons. Some of it was. Jackie did a couple clinicals when she was a student. She was called on to help out on clinicals at sometime. I knew Louise Trubek very well. Louise was the clinical professor here. [inaudible 03:05:53] I know Michelle LaVigne, who is a clinical professor, very well, because we both have a great interest in jazz. [03:06:00] There are a whole series of reasons. The thing is, having them here means these odd sorts of ways that you meet people and find interesting people that you'd like, well, I had a chance to do it. When they were all down in rented offices near the courts, you just wouldn't come across them. You wouldn't ... You might see them now and then, but it did, I think, improve that way.

REEVES Okay. I want to move to talk about publications. [03:06:30] First, some of these publications, I don't expect you to laundry list them, but I think the last one we talked about ...

MACAULAY: Well, let's see.

REEVES At the bottom of page two, you talked about the lessons of school entertainment and spectator sport.

MACAULAY: Yeah.

REEVES We're really now on three and then four.

MACAULAY: Okay.

REEVES Well, there's only one on page four.

MACAULAY: All right. The one thing that [03:07:00] I should mention, I suppose, is you'll see, maybe two inches down, "Macaulay, Kidwell, Whitford and Galanter: Contracts Law in Action, Mickey Corporation." That's the first published edition of a materials for teaching contracts course. We had been preparing those for about 10 years before that, and our law school copy shop put them out and stuff. Now, they're going to be bound, and people elsewhere could use them [03:07:30] if you can sell them. That's a very, very different contracts book. So much of the emphasis in the book is what's going on out in the world? Again, the research, empirical research, that Whitford and I both are doing, Kidwell, less extent, and of course, Galanter is the great expert in alternative means of dispute resolution, so we're bringing a group of people together.

I sometimes joke that [03:08:00] traditional contracts courses give you wonderful history of the British Industrial Revolution, with their 1860 cases and all this. If you really believe in the Common Law, I suppose, you can make your ... It's lovely stuff, but the people leaving us are going off to practice law in, well, at the time of this book, that would have been 1995, but at least 10 years before, we were doing this. The whole thrust of the book is [03:08:30] ... I'll give you a small, the teeniest example, but there's a broader ... Of a much broader thing.

One of the great cases, it's called Hadley and Baxendale. Hadley and Baxendale is a question of a company that carries goods. These days, it's by horseback, and by barges on the rivers. The modern view is Federal Express. This was in 1860 [03:09:00] version of Federal Express, and they misdirect packages, and it cost the outfit that sent the stuff. What is their liability? They set down all these kinds of rules. Well, what we do that almost nobody else does, is we'll give you Hadley and Baxendale, but then we give you a copy of the Federal Express documents, if you want to send a package Federal Express. They limit liability much more than the case limited liability.

It does [03:09:30] seem to me that, if you're going to teach this, that, "Oh, by the way, some very bright lawyers have handled it, and it's lovely ...." Because Federal Express used to have a slogan, "When it absolutely, positively must get there," I was always able to go on and say, "And if it doesn't, don't come whining to us," which is really a translation of how it works. [03:10:00] Really, the cases we select, we always want cases reflecting modern practices where we can get them. We push. There's some of the classic stuff you've got to teach, but we're always asking these kinds of things, and we ask, "How did it turn out?", and we try to put the cases in context. Why did this thing come up and what happened after it's all over because, if you start

investigating that, "There's just been an [03:10:30] error. We remand for a new trial," nobody ever had a new trial. They got a settlement. What was the deal? It's very much bringing into legal education the idea that the outcome, the result of an awful lot of lawsuits that you read about in these cases is a settlement.

Why didn't they settle beforehand? These are the kinds of questions you can ask. Of course, you see Galanter was part of this, was very important than that and these things. [03:11:00] I just say that's one of the important things and, again, we are working on the fourth edition. Right now, as we speak, it has just gone off to the publisher of this book. We're hardly the most popular casebook because, if you're going to be different, that's what you're doing, but people in about 20 law schools have used it at various times. [03:11:30] There's a core of people from outside have done that, so I count it as a success.

An awful lot of people, we discover, I shouldn't say anything about it because it is a weird kind of success, have copied things out of it without attribution, but that's a form of success and so forth. I had a lot of fun with [03:12:00] one that's here called Organic Transactions: Contract, Frank Lloyd Wright and the Johnson Building. That's another big part of my whole career is connections with Frank Lloyd Wright. We went to a Law and Society meeting that was held out at the Biltmore Hotel, and the Biltmore Hotel is fairly close to Scottsdale, where Taliesin West is located.

Jackie discovered that she could get copies of all of [03:12:30] the letters from Wright to her father and from her father to Wright because he was the CEO of SC Johnson and Sons in Racine when they built their now world-famous architectural gem Administration Building. He was the one in Johnson's trying to ride herd on Frank Lloyd Wright to get the building finished and keep the cost down and do these kinds of things.

She got a notebook [03:13:00] filled with the letters one way or the other, and one of the fascinating things is the postal service charged two cents. That was the price of a letter. Wright could write a letter to Jack Ramsey in the morning and mail it. By late afternoon, it would be in Racine. Ramsey would write a reply, and Wright would get it midday [03:13:30] the next day, doing as well today. There was no freeway from Spring Green to Racine, two-lane road, truck, and so forth, back and forth. It had a little of the flavor of email to it. No, not quite, but it was this sort of thing.

There were things that ... I don't want to go on and on about this one but, just to give you a flavor of it, [03:14:00] it starts off, "Mr. Wright, Mr. Ramsey." They're formal letters. They're all signed and so forth. Ramsey writes Wright about an electrical consultant who had come in and been very critical of the electrical wiring in the building. Wright comes back with a letter. He's just furious. [03:14:30] What happens is my father-in-law writes at the bottom of Wright's letter, "Frank, Goddamn it! No! I'm defending you! You misread my letter!" From then on, it was Jack and Frank with jokes put in and all kinds of things.

Part of it was friendly, but my father-in-law was already trying [03:15:00] to contain costs and get Wright to finish it. What had happened was that Wright had no commissions from somewhere in the late 20s. We're talking about major depression, and he survived by giving

lectures and forming the Taliesin School of Architecture. He had his apprentices out there and this kind of thing. That's how he was staying alive.

Suddenly, he gets the Johnson Building in Racine, gets the Hanna House on the Stanford campus, and gets Fallingwater in [03:15:30] the Kaufmann Place in Pennsylvania. From having nothing to do, he suddenly gets flooded with work and prying him away from one job the other. Taliesin West gets built through this period, too. That's another little thing that happened.

Suddenly, he becomes very popular, and just trying to get him to work on getting the Johnson building work was [inaudible 03:15:56]. Of course, Wright, at one point, gives them an estimate [03:16:00] of \$250,000. Again, we're talking 1930s money so you have to put lots of zeros in to get today's money. One estimate that I've seen is \$900,000, which is kind of a little bit more than \$250. My father-in-law was trying to get it done, trying to keep the cost somewhat in line, and so forth.

This is an article about the implications for our ideas [03:16:30] about the contract that we have in the law school from this experience. I just had a lot of fun about it, interviewed an awful lot of people who had memories. These were, at that point, people I thought were much older. I'm now at a point where I know something about that.

That's one I would put in. It was a lot of fun, and I think there were some things to say about it. It still gets commented on, [03:17:00] so that's nice. Why don't I mention contracts and legal realism and improving the navigation of the Yellow Submarine? This is a talk I gave to the contract section of the Association of American Law Schools. I started off with the nuclear submarine, USS San Francisco had hit an underwater mountain near [03:17:30] Guam. The submarine was under water, going as fast as a nuclear submarine can go under water, which I guess is a classified secret as to just how fast that is, but reasonably fast. They just pile into this mountain, which wasn't on any of their charts.

My reason I start with that, I ask, "To what degree is contract, classical, traditional contract scholarship really like [03:18:00] putting our students in the place of the officers on board the USS San Francisco without getting a picture of the mountains that are in the way?", the underwater mountains that they might run into. That's the point of the title.

New legal realism is, again, something I've been involved in, and this is a group of people advocating more getting people out of the building and law schools and having them look at who's doing what. [03:18:30] Lynn LoPucki, who was once here on our faculty, but is now at UCLA, has done a lot of studies of what happens when these big corporate reorganizations bankruptcies, not what are the opinions, say, but what actually happens in these kinds of things. He describes it as stating the law as delivered, and I like that. Sometimes, that's phone calls between lawyers.

Of course, sometimes, it's the [03:19:00] mischief that goes on the in the Judge Judy TV shows, something going viral on YouTube. There are all kinds of ways law gets delivered and mis-delivered and such. Today, it just seems to be the argument is, if you're going to practice

law, coping with all this is part of what you do. There are all kinds of choices that have to be made, so [03:19:30] that was the kind of piece I gave with that.

One of the things I've done a lot of is using song titles in my titles or section headings. Here we had the Yellow Submarine. I've used Things Ain't What They Used to Be, a Duke Ellington tune. That's a nice title for this sort of thing, and then at the end of this, I conclude the thing [03:20:00] by saying that I'm looking for just the right titles to finish it up. Maybe the 'Yellow Submarine' is too gloomy and not the right thing. That I don't want Ellington's 'Perdido', which means lost. We don't really want that one." I thought, "Well, how about 'I'm Beginning to see the Light'", which is a 1940's Ellington tune. We had some fun with that kind of thing.

REEVES: Along with a few of the articles that you wrote that [03:20:30] you mentioned, recently I should say, people started writing things about you.

MACAULAY: Oh yeah. It's better than being ignored, but sometimes you want to say, "Who, me?"

REEVES: Can you give maybe a for example of that? Maybe one that for whatever reason you would like to [03:21:00] talk about?

MACAULAY: Let me just describe there are two things, and I'll talk about one of them in detail. I want to describe the two; one is that two professors at the Harvard Law School turned out a book and they call it "The Canon of American Legal Writing". There are 20 articles, their argument "If you haven't read these 20, you're not really an academic. [03:21:30] These are the 20 to read."

Well, Marc Galanter's "Why the 'Haves' Come Out Ahead" is there and my "Non-Contractual Relations of Business" is in the 20. Two of us on the Wisconsin Law faculty make a Harvard publication. People at places like Harvard think that nothing goes on at the University of Wisconsin, so we're rather proud of that.

Then there's an essay looking at my work. Both the article is reprinted and there's [03:22:00] an essay about my work in that one. To get in the top 20 is a very flattering and nice thing, although he doesn't like one of my articles. I always said, "Under the circumstances I really didn't feel like a comeback." You shouldn't, you're being honored, you should just sit and smile I think.

The thing that I really was honored by and what can I say, [03:22:30] a lot of nice people who said very nice things. Bill Whitford, who I worked with here since 1968, was the moving force to have a conference looking at my work, the whole body of work. He and John Kidwell play a big role of putting the thing together.

Then Jean Braucher who was a professor, she [03:23:00] died last year, a professor at University of Arizona Law School. She had used our material for a very long time and became an editor, really the executive editor, to make sure the rest of us got things done for the third

edition. She was part of this whole thing, and she named the conference and then the book "On the Empirical and the Lyrical."

The empirical is pretty obvious because we do try to look at [03:23:30] what's going on. She's teasing me about my habit of using Duke Ellington titles and doing this thing. Of course she does the same thing, only her tends to be 20 years younger tunes than mine do.

We have about 15 papers, some of them co-authored, most of them singly. [03:24:00] This turns into a book, it turns into a session where people comment on the book at the Law Society Association. All I can say, I'm just terrible honored by the whole thing, that's just very nice.

There's criticism. In fact, if it was all just a birthday party with balloons, I wouldn't be as honored as I am with [03:24:30] people looking at qualifying. A lot of my work after all is done in the 60's and 70's. If it's still true, that's kind of a miracle. The world's changing, you would assume that there would have to at least be a few amendments made along the way.

We're starting to get a whole bunch of studies that very nicely refer to my 1963 "Non-Contractual Relationships in Business", but they're looking at what's going on now [03:25:00] in a quite different world. In fact, I like that. I count that as real progress pointing us to "How do large organizations set up arrangements?" and such.

REEVES: Then, albeit posthumously, I think you were able to return the favor towards Jean right?

MACAULAY: Yeah. She died of cancer. [03:25:30] The last thing she did was give a paper at a conference at Temple honoring Bill Whitford, it was wonderful. We didn't know what she was doing at the time, I was wondering if she was sick or something. I didn't recognize she perhaps had a month more to live. At this she gave a paper, participated very well to honor Bill.

Then they set up [03:26:00] a memorial at Arizona and most of it was people giving papers that dealt with problems that Jean [inaudible 03:26:09] her career. I was asked to lead off with simply "I remember Jean" and talk about her. I was able to play off the song titles we both used as a way of doing this.

I started off, I was her mentor because I was 20 years older than Jean. One of the coincidental [03:26:30] things I always liked was her father was one of my mentors. That was kind of handing down things and so forth. He was a professor at the Harvard Law School.

I went through my files, and then went on to my computer and did a search for Jean. All kinds of things came popping up; letters to her deans saying, "Yeah, that thing she published really was great." This is kind of backing up a [03:27:00] claim for her raise probably.

Then she got a name professorship at the University of Cincinnati where she was for a long time. They needed a letter supporting it and I was quite happy to do it. I could quote from that. We sort of got to be colleagues in the sense that I read her paper, she read my papers, so we

exchanged that and we [03:27:30] did it. You find lots of little goodies back and forth. "Professor X is a fool, but he's funny", and that sort of thing. I will not name Professor X because Jean was sending me her reaction to somebody we both had a bit of a problem with.

She wrote one that she's relying on a story published of an 1850's Harriet [03:28:00] Beecher Stowe, great author at this point. She used this as an example, something she was writing about letting people out of contracts for mistakes. We got in our letters into the plot of Casablanca, you remember that Ingrid Bergman messes everything up in Paris because she doesn't know her husband is still alive. That's the mistake that the whole plot goes on. We were trying to talk about, [03:28:30] you got the three of them; husband, Ingrid Bergman, and Humphrey Bogart, and they're in Casablanca. In 1940, given the restrictions about movies, how do you end this? We were having a fine time with the letters.

Again, something you do with a friend, you amuse each other and such. I was able to talk about that in the "I remember Jean." It was a thing. I was able to draw on [03:29:00] two Ellington titles to end with; the one is "All Too Soon", which I think is appropriate to a woman who dies in her 60's and had so much more still to contribute. The end of it was "I'm just a lucky So and So", because I did get to know her. That was my ending, people seemed to like it.

REEVES: I guess since we're on the topic of loss, I'd like to ask about your wife's passing.

MACAULAY: [03:29:30] Yeah. How do I express it? We were partners. Again, it was not a romance novel, it was a marriage. We weren't always happy with each other and we were coping with problems. We were kid poor and house poor, we had a house that we really couldn't afford, then you throw four [03:30:00] kids on top of it. They do need shoes and socks and a few other things. And yeah, we really were well off if you compared to somebody who was really poor. We just had to watch it and do these things. But basically we really agreed on so many things. And it was the kind of thing where I didn't have a work life separate from my married life. I talked to her about [03:30:30] what I was doing and wow did I get good advice. Having Jackie read your manuscript, first, was not for the weak. Jackie was not going to tell you, 'Oh, this is wonderful.' 'Why in hell did you say this?' is much more ... 'Don't you want this?' 'You're repeating yourself. Do you have to make this point three times?' This is the sort of thing that you would get. And 'Did you ever think about Robert Merton's point about [03:31:00] this?' And 'Aren't you just repeating Merton? Shouldn't you cite him here?' This is the kind of thing ...

Now, the nice thing about it is, when you got over the wounds of Jackie reading your paper and you patched it up as best you could, you didn't fear some outside reviewer, you'd been through more than any outside reviewer. My batting average was pretty good with outside reviewers. I didn't get turned down too often [03:31:30] or revise and resubmit. And when it did, it was usually pretty quick; you could put a Band-Aid on it and ship it back to them pretty fast and this kind of thing.

So she knew about that. And of course she knew the people we socialized with and an awful lot of them were law professors, or they were people from the social science departments who were engaged in the law and society enterprise and were all part of this kind of thing. And

then, of course, she had her own circle coming out of psychology [03:32:00] and that. So I was dragged into that loop and these kind of things.

That just was nice, having all these things we did together. She got a PhD in social psychology and really the only job she could get because she couldn't move -that was the problem: [03:32:30] the two career problem was really right there- was essentially working on research projects on soft money. And she was very popular for that role, it was great. But it isn't a career that leads any place. You do this project, the article gets published, then you look for another one.

We went off to Buffalo. Well we went to South America, and she [03:33:00] was away, and I'd been away from Madison, so I got a letter from the dean saying there'd be a job for her in the psychology department. Well he hadn't arranged it. He forgot. And I think, I was talking about this this afternoon with a woman who we've known for a long time, and she'd gotten an advanced degree in the same era, and just the attitude was; well, there are these hobbies for the little ladies. And [03:33:30] it wasn't important to find that. She'd find something else. She'd work for the league of women voters or she could ... There are all kinds of charitable organizations that women can work for and do good and these kinds of things. And the thought that she actually had worked very hard and was probably smarter than most of the people in their psychology department ... He hadn't taken this into account.

Well, we came back to Madison rather fast off that. She got involved in affirmative [03:34:00] action. She was appalled; she'd discovered the statistics the university was submitting to the federal government because to keep the grants going, they had to have affirmative action programs. And her line was that it would be nice if the University of Wisconsin Madison would submit statistics that would pass any of its own statistic courses. And they didn't. She found all kinds of things and wrote replies. [03:34:30] She was not very popular among certain administrators doing this.

This got her, she was counseling lots of women who were assistant professors not given tenure, or three year reviews or negatives. And there were some just outrageous stories. The woman in one of the science departments who ... She was too fat and too messy. Have you ever seen a male [03:35:00] science? The dress code is rather relaxed among that crew. They comb their hair once a month. This is kind of what my image of a chemist. And the thought that they could find someone not fit to be Donald Trump's tenth wife ... I'm sure the woman was overweight, but so are a lot of us. [03:35:30] It just was outrageous.

And there was a debate in one of the science departments about why can't women do science? Is it genetic or is it cultural? And of course, women were doing all kinds of things for these people. In many cases, they were actually doing the research these people were putting their names on. You mean the dirty job of actually coping with making the experiment run? And these sorts of things.

So she got told, [03:36:00] 'Well, what you ought to do is go to law school.' And she thought that was the silliest thing anybody ... Now she knew a lot more about law and law school than most faculty. She'd been a faculty wife and hung out with a lot of law professors. She took

the law school aptitude test as a way of shutting people up who said she couldn't do things. Well, she'd been helping our son Phil who's now an engineer with his high school math. And this was an era in which [03:36:30] the law school aptitude test they had a lot of math and this kind of thing. She aced it and she could've gone to any law school in the country. Except we had two kids in college, so she went here and had a career and then went off and practiced law for individuals.

Her first clients were in a battered women shelter. They need lots of lawyering. A lot more than you' think. [03:37:00] A lot of family law ... These were horrible situations. Could you make the horrible merely bad? And that's very depressing. There's no magic wand for many family break-ups. There isn't a solution. You do the best you can and this.

And the faculty union which existed [03:37:30] at this point hired her a number of times to represent people in various kinds of squabbles for the university, she did this kind of thing. And she managed to hire an associate, one Tammy Baldwin, and Tammy began her career as Jackie's associate and, I think I pointed out to you before, Tammy's remark about her at Jackie's memorial was 'She [03:38:00] taught me how to practice law and still have a heart.' Which, Jackie would've liked that. Jackie would've ... All compliments had to be pushed away. She was one of those. But secretly, she would've liked that.

So, you know, I had someone that was a partner in raising four kids, was a partner in being interested in Frank Lloyd Wright and Frank Lloyd Wright buildings and houses, going to concerts, [03:38:30] plays. She loved the theater. She was great. I'd go to a committee meeting in New York, she'd come with me, and she plotted out how could we see the most plays. And it meant this matinee, then you got in a cab and zipped over here and you saw this one. And then the end of the evening; see what jazz was down in the village. And maybe a good dinner sometimes. And she was a champ at getting how many plays [03:39:00] we could get to in one long weekend and these kinds of things.

She was fun and she was funny. Didn't like powerful people dumping on ordinary people. And she came out of a family, after all her father was the CEO of SE Johnson and Son. This is hardly what passes for elite in Wisconsin, I guess, and so forth. But she just always [03:39:30] had the notion that ordinary people probably are pretty smart too. I gave a talk about her to a student group that she founded here, the Public Interest Law Foundation, it's still going strong, which is good, and one the things that she always pointed to was in those days, Racine, which is along Lake Michigan, so essentially north and south city, [03:40:00] what they had done for their elementary schools is they just drew lines east and west, and given the nature of having a thing on the lake, that meant that each school district got a sample of a socioeconomic classes of Racine, because out west, towards the railroad tracks, not-so-wealthy and working-class people live. You get right up against the lake, [03:40:30] this is wealthy. She said, "You discovered in elementary school that some of the kids from the west were a lot more fun than some of the kids from the east." She said, "That was always ..." She always thought that was very valuable.

She had a lifelong friend that she met in first grade. Father had been laid off from a factory job in the Depression, scrambling to stay alive, and this kind of thing. She had very much the notion that you take people [03:41:00] one at a time. She also went to ... She was dragged to

Europe, into World War II. Her father tried to rehabilitate Johnson's business in Europe. She went to an English girls school and then a Swiss girls school. She came away again with experience that made her take people one at a time. Left-handed Italians, [03:41:30] working class, can be brilliant, wonderful people, that's very much her attitude, and that they can be dumb and terrible, too. It was not going to the opposite, you know, "All people of X are just wonderful." No, take them one at a time. Even taken one at a time, they're probably a blend of good and bad things.

REEVES        Mm-hmm (affirmative). Then, at her passing, or after her passing, there was a booklet or a pamphlet.

MACAULAY:        Yes, mm-hmm (affirmative).

REEVES        I wonder if you could talk [03:42:00] a little bit about what you know about the creation of that.

MACAULAY:        Well, I did it. I'm the editor, so I ... What happened was we staged a memorial and invited several, well, yeah, people to speak. The kids, I worked very hard to make it so that they could talk or not talk, depending on how they felt. I didn't want to push them forward. It was interesting, two wanted to talk and two didn't. They [03:42:30] were just getting up and saying like a paragraph. We're not talking about long speeches. I gave a talk with the title, "I Remember Jackie," trying to figure out what in the world has happened. She dies of cancer, and I still can't believe it.

My kids said to me, when they had heard that, "There was [03:43:00] so much in that we didn't know anything about." I was very struck by this. "Well, but ..." I was telling family stories. Of course, they were making the point to me, "Well, what do you know about your parents that doesn't have anything to do with you?" You know some things. I'm not trying to say none, nothing, but there's a lot you won't know about them, and this kind of thing. They were saying, "You ought to write this [03:43:30] down." I pushed people who had talked to give me what they said, and most, but not everyone, did. I had a couple people, two people, who wanted to be in the booklet who had not spoken, and so, okay, we took those.

We wrote it, tried to get some pictures. Again, there was a woman in our Institute for Legal Studies who had handled [03:44:00] a lot of the publications, she sent me to just the right people at one of our local publishers who could deal with the photos, and shape up the book, and do that kind of thing. It was the first step towards coping with the fact she wasn't here. At least I could remember her, and look. We have Tammy Baldwin's letter is in the book, where she made that nice statement there. [03:44:30] Nice statements about ... Two of her kids have nice statements. Her best friend was a woman who is the mother of one of my son Phil's best friends. That was their connection. They had been mothers of kids in the neighborhood. This, she came up with a wonderful thing that started it.

We put it down, and put it together. I had a mailing [03:45:00] list, which was like Christmas cards. If you go back to our days at Stanford, we've known lots of people. We've moved, and they've moved. I got just an awful lot of letters from people back who had read the

book and wanted to tell me a story about Jackie, and that kind of thing. It served its purpose that way very well. Then, I, [03:45:30] as a way of trying to cope with the situation, the first thing I did was I went to the DoIT Center, and I took a two, three day course in Photoshop. We had what seems like a million Kodak Carousels. There is a product long-gone. It's like stone tablets and things like this.

I know a lot of people who have a lot of Kodak Carousels and slides. You'll discover that slides don't age well. The [03:46:00] color of a lot of Kodachrome just goes all onto the cardboard around the edges of them. Bringing them back, first, correcting the mistakes of the photographer, me, and secondly, getting the color back in the pictures, and I could frame it better, and chop people out that don't need to be in there, and do all those things ... I went through and downloaded a whole bunch of stuff and worked on it. I have a collection of family slides now that are [03:46:30] all on my computer.

I did that, and then tried to start a family history. One chapter is Jackie pre-Stewart. The other is Stewart pre-Jackie. We do that. Stanford, San Francisco, worked with a judge there, Chicago to Madison. [03:47:00] I've pretty well gone through that and put things down. It was good. It was good to think of the troubles and think of the things that were good. It was fun. I have been very fortunate that I have a number of friends, many of them who've been contract teachers, or sociology of law teachers, things like that. There have been people to go out to dinner with. Two of my kids live in Madison. [03:47:30] Two I can go visit, so that's been nice, on this.

Lot of the time ... Jackie would have been absolutely fascinated with the idea of electing Barack Obama. She always was against racism and this kind of thing. I'm sure she would have cried with that session in the park when he was ... Remember this is the famous one, and such? I think some of the present politics [03:48:00] would get her crying for quite different reasons, and these kind of thing. The attack on the university, she would have considered outrageous. The whole business, this, I still think, is a miracle, that Wisconsin, given the size of the state, and given its income and wealth, has a university of this quality. It's just a miracle. The thought of throwing [03:48:30] it away, it seems to me, is Stupid with a capital S, but then, I'm an old professor. No one's asking me what to do, that's for sure.

REEVES       Right. I want to ask one more thing that I forgot to write down here. That might get us to the end of the day, and then we'll do one more session.

MACAULAY:       Oh, okay.

REEVES       You mentioned Photoshop. One thing I try to ask that I forget, I forgot to write down and tell you about, is the rise of technology, and how that affected your work [03:49:00] and your teaching.

MACAULAY:       Right. Right.

REEVES       I wonder, just ...

MACAULAY: Well, the simplest way in the rise of technology is that how do you make contracts? Of course, we used to exchange letters with three cent stamps or 15 cent stamps, and that sort of thing was the way one made contracts, and such. Now, you ... If I want to buy from you, I'm going to buy something from Amazon. [03:49:30] Well, Amazon knows darn well that only one or two totally crazy people will actually open up their terms and conditions and read them. I downloaded them the other day, so I could work and see what they were, and this kind of thing. Of course, we all lie, "I have read, and I agree." Click. That's the way we make contracts. That's one of the big things we throw in. Is that okay? [03:50:00] Amazon knows darn well that people aren't agreeing. They're just going click. You can say they assume that people assume the risk. Aren't there some limits on this? Can Amazon take your first born and sell it into slavery? There have to be some limits on what they can put in the contracts that really aren't contracts in the sense of choice and individualism and that kind of thing. That's [03:50:30] a simple way that it affects.

Another way is we used to have a woman in the law library, Cindy May, who was just the most wonderful detective and her abilities to find what is it that the librarians called it? It's called a fugitive materials. I love that phrase, fugitive. These are documents that you can't get anymore of. They print 50 briefs in a case for the Supreme Court and you've got one of the 50, and if you lose [03:51:00] it you're not going to get another one. Of course, when I started there wasn't a Xerox machine to take a picture of it. You couldn't handle it that way. She was just amazing at finding ways of getting a hold of stuff that today anybody can simply go to one of half a dozen online sources. You get all of the motions, all of the briefs filed in the trial courts. [03:51:30] That stuff used to be just totally unavailable.

Now it's we may have an overload of information, that maybe more the problem to deal with. How do you wade through all the stuff? It's the kind of stuff you wade through, you wade through, there's nothing here, nothing here, and oh, look at that. It's no guarantee that that wonderful aha moment's going to come, but every now and then it does. You really find some fascinating stuff that affects what you can find.

We do [03:52:00] have that all available. I don't want to claim that I'm really up on being able to use it. Fortunately I'm still have a few friends at the University of Wisconsin law library and I can say something like, "Bonnie, why do you do this, or Kris how do you do this?" They'll hold my hand and do this and miracles happen and look what's up on the screen. [03:52:30] A lot of it is what they can do in seconds would take me half an hour. I can figure it out, but it's so nice to have somebody who can just zip it off.

I guess I would say that in doing the research, that's good, but the research and the technology change does produce issues for a contracts teacher, well lots of other things. [03:53:00] Certainly intellectual property is a very different world today than it was 25-30 years ago. I mean the whole business of your rights to use things. I remember there's a piece in our sociology of law book all about stealing stuff. What was it? I can't even remember the vocabulary. You'd buy a CD and then you'd put it online and then everybody could copy [03:53:30] it. There's a phrase for that.

REEVES: It's skipping my mind too. It was like Napster was [crosstalk 03:53:37].

MACAULAY: Yeah, that's the kind of thing. Now I mean it seems to me does anyone ever buy a tangible CD? We talk about records but we really mean something that we're streaming in or this sort of thing. There're just a lot of questions of rights that are all involved [03:54:00] in this kind of thing. I got reading about Prince and he had very strong opinions about what had happened and people snatching his work away.

REEVES: I think where we're at right now I think it's best just to wrap it up here, and then we have four or five more questions to wrap it up.

MACAULAY: Fine.

REEVES: This concludes session number four with Stewart Macaulay. Stewart, thank you for your time.

MACAULAY: You're quite welcome.

REEVES: [03:54:30] Today is May 12th, 2016. This is the fifth and final oral history interview with Steward Macaulay. Again, we're here in the law school. My name is Troy Reeves and I'm with the UW Madison Archives. Stewart, as we've done every other time, and since we have a new recorder, I wonder if you wouldn't mind saying your name and spelling your last name?

MACAULAY: I'm Stewart Macaulay, and the last name is M-A-C-A-U-L-A-Y.

REEVES: [03:55:00] Excellent, so I'm going to get this just a touch closer to you. You don't have to speak up or anything. It should pick you up just fine. Before we turned on the recorder we went through what we want to ask, so what I want to start with is your thoughts about the law school in general during your time here?

MACAULAY: I fell into one of the luckiest things that could happen to a person. I didn't know anything about the University of Wisconsin Law School or really Wisconsin, if the truth [03:55:30] be known. My wife was from Racine but I met her in California. What was happening was Willard Hurst, the great legal historian, had come back from World War II wanting to make a whole new kind of law school, one that paid attention to law as delivered. He worried about the tremendous focus on appellate cases. He had some sort of a statement about that [03:56:00] there was a place to consider the great appellate cases, Brown versus Board of Education, and things like that. He said, "Life is not melodrama." That was his ... Really what's going on in lawyers' offices has to be studied because it's far more likely to affect people.

There are writers, you know, that say Brown versus Board of Education had no impact. I think that's people who were disappointed, and it had all kinds of impact, but much [03:56:30] more indirect than direct kinds of impact. Hurst wanted to form this kind of a law school. He had a partner, Jake Beuscher [03:56:39]. Beuscher was more likely to do and go out and write new statutes for the state and knew how to get them passed or administrative regulations. He discovered the environment before the silent spring. He was a great outdoorsman and was

appalled at how we were cluttering up and [03:57:00] the landscape and these kinds of things. He was more likely to write a new statute and lobby for it. Willard was more likely to write an academic article. They both were quite a partnership.

What they wanted were people from administrative agencies, higher on the faculty, and they wanted people with useful experience but not too much, meaning people they could mold [03:57:30] and I fell right into it the thing because I had never practiced law. I had been a judge's law clerk. I'd been a teaching fellow at the University of Chicago after law school and so forth.

Willard got a grant from the Rockefeller Foundation. He got in competition with Lon Fuller who was Harvard's great legal philosopher. We were going down to the philosophy expressed in the laws or were we going to go out and look at [03:58:00] the grubby stuff as to what goes on every day? The Rockefeller Foundation, miracle of all miracles, gave the money to a Midwestern state university instead of Harvard, which is very unusual.

Willard managed to build the research part of the faculty. There was always people very concerned with training Wisconsin lawyers, and we're still a law school and we're [03:58:30] having a hooding ceremony tomorrow and very quickly the students from that are going down to be sworn in in front of the Supreme Court of Wisconsin as lawyers. You better give them some training how to be a lawyer. The whole idea was that part of us were asking, "Who uses this stuff?" I've often said that ESPN used to run a [03:59:00] clip of Vince Lombardi, the Green Bay Packer coach, yelling, "What the hell is going on out there?" I said, "That's Willard. Vince Lombardi and Willard." What is going on out there and we know that if you look at what's going on a telephone call is what a lawyer does rather than cross examine, I mean if you count it up.

It's a little like medicine. How many people are brain surgeons? [03:59:30] It's very important to have a group of brain surgeons, but you would not want to typify all doctors by brain surgery. The number of people who actually get up in court is ... I don't know anything about the proportions, but it's something like that. What Willard would do, Willard would take us out to lunch. You'd have your lunch with Willard. He would talk about your 10 year program. [04:00:00] I was a beginning law professor, with a class to meet that I had never taught, and my 10-minute program was much more [inaudible 04:00:07], but he pushed us to not just coast and do the conventional ... Think about who uses this stuff and what for. Frank Remington was one of his students, who had then gone on to be the great professor of criminal law. Frank had written the criminal code [04:00:30] of Wisconsin, with a committee. There was a committee, but he was the drafter of it. He had been on the group that did the model penal code, so Frank knew the criminal law to the comma. He said, "If you want to know the criminal law, what you've got to do is ride in a seat in a squad car on a hot summer night in a big city." That was much more the perspective, you see.

[04:01:00] I was open to this. I fell into it because my father-in-law wanted to know what I was teaching. I told him some Lon Fuller legal philosophy from Harvard, because that's what I was teaching, and he exploded. He said, "If you have to go see a lawyer, you're not going to be where you would have been had the contract been performed," and that, "The contract law was not a substitute for performance." Well, part of what you're going to do [04:01:30] if you start down this road is see that law is but one of many normative systems with sanctions in the

society, and people draw on all of them, long-term continual relationships, the fact that this is my brother-in-law, family, all of these things. Indeed, going to court, this is a hostile kind of step. It breaks up relationships. [04:02:00] When do you use it? Nonetheless, the legal rules influence things. Maybe we get them off television instead of actually going and using them, but we don't know.

In any event, the law school had a group of people, and the whole idea was to try to ask, "What difference does this stuff we're teaching actually make? How do they use it?" A lot of it, of course, you'll discover, is you have this stuff you teach in law school, [04:02:30] the classics. Go interview lawyers, and their game is, "How do we get around that?" Drafting a contract with certain provisions, putting your money in the Cayman Islands, there are all kinds of ways of coping with laws you don't like. This has to be studied if you want to understand law.

It is a kind of approach. All right. We built [04:03:00] a whole group of people interested in at least asking a few questions, some of them actually going out and doing real field studies, people who partnered with social scientists, and worked on projects. This was where the action was. Now, there was going at the same ... Related things were going on in two or three other law schools, Berkeley, Denver, Northwestern, probably, and maybe one or two others. [04:03:30] I'll do that, because those are the ones that come to mind immediately from the early days. Most places, this was considered odd, little thing.

One of the problems was, it's the University of Wisconsin. Now, University of Wisconsin, we're all very proud of it. It has a terrific reputation, all those kinds of things, but still, there's a certain East Coast bias. [04:04:00] If Harvard and Yale aren't doing it, is it real? Maybe Stanford thrown in, and this kind of thing. If you get recognized by Harvard, then that's good. Then you're real, and these kinds of things. Well, that was good. The other problem that we always had, it is Wisconsin. It snows here. A March for somebody who grew up in Southern California is a thing to be endured. [04:04:30] The fun of the beautiful snow is gone by that time. We've had it, and these kinds of things. You have that.

You also have the fact that, we used to joke, "Thank God for the University of Indiana Law School." That way, the University of Wisconsin Law School wouldn't pay the least amount of money to its law professors of any school in the Big Ten. Now, Indiana has raised the ... They now are much better off, and gotten a lot of money with a very exciting dean, [04:05:00] so I don't know about this. What this meant was we were very vulnerable to being raided. You add in it another factor that came along. When I came here, for most people, you had the institution of the faculty wife. Husband was the professor, then you had the faculty wife. It wasn't too long when suddenly she started getting [04:05:30] a PhD, or she had a job as a lawyer, for example. Now you had to come up with two jobs if you were going to hire somebody and going to keep somebody.

Madison is a funny town. It's a great town for lawyers. In fact, it's such a good town for lawyers, if there's a good law job, there's a line of 20 people applying, because an awful lot of people don't want to go back to their hometown. They want to stay in Madison. It's one of those problems, so where are we going [04:06:00] to find a job for the wife? Then of course, when we get enough people coming in, it flips. We hire the wife. Where are we going find a job for the

husband? It's the two-career problem can work both ways. I faced it. We, after all, went off to SUNY Buffalo, because the dean had promised a job for Jackie, a promise he broke, that's why we came back.

Put all that together, we tended to run [04:06:30] as a school with a hole in the middle. That is, you had older professors who had some reputation, had done wonderful things, and their roots had gone down in Madison. You had the newcomers, who had just been hired, assistant professors. There we some in the middle, but we'd lost a lot there. This has been one of the great problems. One of the problems has been [04:07:00] that an awful lot of people that have some reputation in the Law and Society Association, and this kind of thing, are now emeritus professors. You're looking at one, but we can get quite a group of Law and Society people together who once were professors at this law school.

You've got some good people, but it's a struggle now. In some ways, we're victims of our own success, because, [04:07:30] as more and more schools see that looking at how things work is important, then we no longer are quite so unique, no longer can quite sell that, "Well, we may not pay you quite as much, and it may snow in large ... Here, but we're doing this wonderful stuff." Well, they're doing it at a place where the climate is a little better and the pay is higher. We [04:08:00] have ... The place has a wonderful tradition. It still has some great people doing fine things, but it's going to be a struggle to keep it as something special and uniquely ours. As I say, maybe that's being a victim of our own success. We tried to sell this approach, and it sold. Now, we're doing it lots of places. Then we have to say, "Well, [04:08:30] what's the university going to look like 10 years from now?" That's going to be a huge problem, hiring new people. They want to come here.

Now, this isn't the place to go into the whole debate about state universities and so forth. My notion is that upward mobility was one of the great things they had. Tommy Thompson's story, the kid from Elroy, is one we in the law school always were very proud of. That's [04:09:00] one reason I was proud of teaching in a state university. I did it the other way. I went to Stanford, but I went to a junior college to earn money, or to save money, so that I could possibly make ... I was about to say, "So I could afford Stanford." I never could afford Stanford, but we get by, and I have a piece of paper that says I'm a Stanford graduate.

REEVES: Well, Stewart, thank you for that [04:09:30] beginning there. We're now going to completely switch gears, because there was something I wanted to ask you that I didn't get to last time. That was the question that you've lived through three notable events in American history, the bombing of Pearl Harbor in 1941, JFK's assassination in 1963, and then 9/11. I guess what I'm asking is [04:10:00] maybe not so much your memories of those three events, although that's important, but maybe not so much your memories of those three events, all those that's important, but which ones, if you think because you experienced them at such different ages are your memories of them different because of that?

MACAULAY: Well of course. I mean I was 10 years old when Pearl Harbor was bombed, I'm now 85 and there's a year or two between those. And yet something is very vivid. My [04:10:30] father's boss had a yacht at Newport and we were invited to go for a ride on his yacht out in the east streak between Newport and Catalina Island. It was December 7, 1941 when this

happened. That was Sunday and we were invited and so we had our ride on the yacht and when we came back in the radio in the bar at the yacht club was [04:11:00] blaring and of course people were talking about Pearl Harbor had been bombed. I was 10 years old. I was fascinated, I didn't know what in the world this meant but my heavens! The United States is going to war?

And of course the bartender kept pushing me out. I was 10 years old, I shouldn't be in a bar. So I remember that very vividly. Trying to find places where I could hear the radio in the bar, but still not be in a place where they sold alcoholic beverages. [04:11:30] I was interested in alcoholic beverages. I remember driving home, my father always listened to the comedy shows on the radio, particularly on Sunday. Jack Benny and things of that sort. He was very much into this kind of thing. And they kept interrupting Jack Benny, "We interrupt this program to bring you an important announcement." And then something else from Pearl Harbor and so on.

So that part is vivid. I can remember Victory [04:12:00] Gardens where I learned about fresh vegetables. Carrots that had been in the ground maybe 30 minutes before they were served, that's a very different vegetable than the one from the supermarket. We had an acre of ground with all kinds of fruit trees on it so my tastes got twisted because after all in 1941 if you were a male you ate meat and potatoes. [04:12:30] Vegetables were feminine. A salad? My heavens. It's like wearing a pink shirt.

I think that what I remember more about it though is the changes that affected my life so much. Here I was living in southern California which was a collection of small towns with [04:13:00] fruit orchards around them. Now if you fly in on an airplane today that's an unbelievable statement because you know its wall to wall housing tracks. But it wasn't like that and what had happened was when war production, particularly aircraft production, was put in southern California intentionally because the weather was good. You wouldn't have to close factories for bad weather. And also if you were building airplanes it's nice to have [04:13:30] good weather to take them up and fly them and test them and do these kinds of things.

This meant all kinds of people came into southern California, including African American people from the South. A huge out migration from the South to southern California. So it changed the kinds of people I went to school with. I actually had friends who were Black which was kind of amazing given the change. I don't want to say life was all [04:14:00] terribly integrated, but it was that kind of a change.

In fact I have a story which I tell and it's indicating things. I love jazz, and of course jazz was played by Blacks. And so as a young little boy my notion was Blacks were smart people, which was not the prevailing view of bigoted Whites. And [04:14:30] my mother was from Atlanta, Georgia and we were living in southern California and this was a world where we don't have airplanes with cheap fares and stuff. It's a long way from southern California to Atlanta, Georgia. It's maybe four or five days on a train.

We went just because I should meet my cousins. You couldn't go all the way, you had to transfer in either Chicago or New Orleans on a coast to coast train trip. [04:15:00] We got off the train in New Orleans and I saw the signs "Colored Waiting Room" "White Waiting Room" "Colored Mens Room" "White Mens Room" I was appalled. It just was one of those events in

my life just "This is wrong." Here I am 15 years old and it was kind of like a slap in the face. "What is this?"

But it was probably good for me in one sense because I had to go deal [04:15:30] with all my Atlanta cousins and keep my mouth shut. So it was kind of a warning "You are going into a strange and perhaps hostile culture." I got back and talked with one of my Black friends and he says "Those signs are all over Los Angeles. It's just I can see them but you can't."

And then you start reading stories about how Nat King Cole, who was the number one male vocalist [04:16:00] in the country, had to go in through the kitchen entrance to perform at one of the big fancy hotels in Los Angeles. He couldn't come in through the front door. I mean there were all these kinds of things.

And then the final thing I'll say about that is I then had to go to school with people on the G.I. Bill of Rights. And these were not college students trying to drink their way and be sociable and get the gentleman's [04:16:30] C. This was a group of people who had seen things and had their life turned up and down, at least my experience of them as a group is, they were going to get the good grades in class and I had some pressure to get good grades and they made it 10 times as hard because that was quite a group to go to school with. It just changed the culture that you might have otherwise.

Well, JFK. [04:17:00] Couldn't believe it. It was a fantasy or it was something being shown on television. Orson Welles may have put it on. This couldn't happen in the United States. I was just shocked and so forth. Now, if you know American history [04:17:30] we were very lucky Franklin Roosevelt wasn't killed in Miami. Killed the mayor of Chicago instead. If he'd been a little better shot we wouldn't have ever had Franklin Roosevelt. And then we do have presidents who were assassinated successfully, Lincoln and so on.

But nonetheless I just assumed "No, nothing like this could happen." And then it happened and you started sorting out [04:18:00] just what was going on. That the country was so ... I mean we used to think "Okay. Sometimes the Democrats are in, sometimes the Republicans are in, but we're all Americans and they're just variations." Well something more is going on here than that under those circumstances and you started looking at it. Now of course [04:18:30] it led to the Civil Rights Act. Lyndon Johnson, all of that. And in many ways, it was a terrible thing to happen, but I was hoping that something good would come out of something bad. But as Lyndon Johnson said that he was giving away the Democratic Party when he signed that bill because the "Solid South" was a phrase referring to the Democrats. That was Roosevelt's base, [04:19:00] and now you were turning it over to the Republicans, and not the Abraham Lincoln Republicans. These were the Segregationist Republicans and you get Nixon's southern strategy which is basically "We'll find ways to avoid both Brown vs. Board of Education and the Civil Rights Act" and so forth.

So I guess you can say my experience of it was [04:19:30] the quiet consensus was shaken, and then of course you get Malcolm X, Robert Kennedy, and Martin Luther King assassinated. And it suddenly becomes the American way instead of some odd little thing that might happen, it's all over.

We were very affected by it. Finally [04:20:00] when Dr. King was assassinated, I know my wife, Jackie, was in tears. That just broke her up totally. She went and bought a rose and went and put it on the steps of a black church in South Madison, and she said, "It's meaningless, but what can I do?" How do you react when you hit a situation like that? I would say, again, that it's not just JFK. It's [04:20:30] the country changing. Maybe the country didn't change at all. Maybe it was just that some of us woke up. I'll concede that very quickly and such. Then, of course, 9/11 comes along, and the Japanese bombed Pearl Harbor. That's where we started in all of this, and Pearl Harbor and Hawaii is part of the United States. I'm not one who denies the President's [04:21:00] citizenship, but it was far away, way out in the ocean, and we didn't have a sense that the United States had been invaded. Maybe we should have, but we didn't. The war was fought over there. World War I [song 04:21:20]. That was the idea.

Now this was Manhattan. [04:21:30] They didn't go after some odd, little place. How central could you be? They probably would have got the White House if the passengers hadn't, the plane that crashed in Pennsylvania. I assume it was on the way to the White House. That was my guess is what the target was. [04:22:00] Again, it brought home this crazy position that the United States has in the world. Everyone wants to be like us, and yet, we represent all that's bad. It's a weird thing. I still remember being in Chile, the time I spent there, and all of the Canadians liked to have backpacks with maple leaf flags on them. We're not Americans, you see.

On the other hand, [04:22:30] what were you watching on television? You were watching American TV shows. When you went to the theaters in Santiago, there were some European films, there were some Latin American films and so forth, but the ones that everybody went to see were American films. In many ways, the TV and the films give the world a picture of us, which is crazy is the best way you can put it. It's hardly typical of the way Americans live if you look at those [04:23:00] things. If you get your ideas about America off TV and the films, you're going to be very surprised when you arrive here.

I think that's a very important part, that suddenly we're in the world, we're vulnerable, and we're not loved. Yet, we all feel, not all, but there is an American thing. They ought to be grateful to us. We've been the nice guys. We're the good [04:23:30] guys. Not everybody sees it that way. If you look at things we've done, I supposed you can ... If you look at it through their eyes, you might be able to understand it.

The idea of democracy and secularism and world culture and so forth, it's very threatening to people who have [04:24:00] profound religious beliefs. I can understand it, intellectual sense. I don't feel it because I'm not threatened by those things the way they are. It's very hard for us to ... If individuals can do all this damage and they're willing to die for it, it's awfully hard to see what you would do. I laugh at notions like, "Well, [04:24:30] we won't let Muslims come in the country." It seems to me if you just look at the people who are dissatisfied that buy their automatic weapons and go and do these, a lot of them are very home-grown, American as apple pie, or people that shoot up their high schools and these kinds of things. I don't think Muslimism is the explanation for what's going on here, but I would say that it [04:25:00] brought home ... We're in an international culture. Not everybody loves us, and they may have some good reasons not to, and we're facing people who ...

The thing that's also fascinating is how much they've adopted the Internet and all of these modern things that have come along since the turn of the century [04:25:30] now are weapons being used against us, which that I never would have predicted. One of the things ... We had a case we used as an exam question. It involves a contract to build a thing to defend against using a cell phone to set off a roadside bomb. This was a company that built those [04:26:00] and had ... The question, the argument was they breached their contract. Here we're talking about people who come out of these traditional cultures, and the way they're setting off bombs is by using cell phones. That's fascinating if you think about it.

You asked the question and living through [inaudible 04:26:25]. One of the things that's so hard that I found as a contracts [04:26:30] teacher, we try to keep our stuff up to date. Many of the contracts cases you're teaching happened before computers, and our students have the darnedest time. My story about going to Atlanta, Georgia, and it taking five days, five hours on a plane, five hours or more if you add in the time to getting through security and all [04:27:00] that, but the actual plane ride, it's so different and that.

REEVES      Thank you for that. We are now at the last couple of questions. We did talk about this question, so I'm going to ask if you wouldn't mind talking about why you retired when you did.

MACAULAY:      I retired in 2008. The university had faced a budget crisis. The legislature had cut its [04:27:30] budget drastically we thought then. Little did we know what was ahead later, but at least in 2008. The various deans of schools faced the problem of how do they deal with the cuts. Where do we put them? A big part of the budget of any unit of the university is the labor cost. It's the salaries of the people who do various jobs around, [04:28:00] so one way of solving the problem would have been to fire a bunch of people.

The dean of the law school, an old friend of mine, Ken Davis, he once even taught contracts as part of our group, so we go way back, came to my office, and he came to four other people, too, and he said he had the blue light special, that is that it was only going to be good ... This was on a Monday, and this was only going to be good till Friday [04:28:30] because he had to make a decision right away. What he said was, "If you will retire, you'll get your pension," and when you look, it's pretty good because our pensions, for somebody who's been here since 1957. That's a lot of years put in that way. "You'll get your Social Security," which I was drawing, "and then what I will do is sign a contract with you for five years. You teach one [04:29:00] class instead of the two or three that you've been teaching a semester, and you'll get half your present salary."

When you put half my present salary together with the pension, I would never been so well off. That was a incredible financial thing. Then he said, "And then if you and the others will do this, I won't have to fire anybody without job security." [04:29:30] As I said to you, how long does it take to make that decision? One second, two seconds, three, not much more than that, for Heaven's sake. I can come out better off in some ways. The alternative is they lose their job. I'm not quite that mean and wicked. You had to do this, but what that meant is 2008 plus 5 [04:30:00] is 2013, and how did that happen? So when the contract was up, that was that. So out

the door we went at that state. When you're in your 80s I think you should really face up to the fact that better to leave early than, too early than too late, and maybe I hope I managed that that was the situation. I can't be totally sure [04:30:30] on those kinds of things.

REEVES Well thank you for that. Then the final question is a two parter and that's, the first is what do you think you'll be remembered for?

MACAULAY: Well, I wrote an article, published in the American Sociological Review in 1963, and it makes the point that I keep making that there are lots of ways of entering [04:31:00] into bargains and solving disputes that don't involve suing people and that long term continuing relations do a lot of the work and the big thank you, that is losing the customer, losing the account, this sort of thing.

All right. This article has been there cited, you never know, citation is cheap, you never know if anybody ever read the article, and it's cited for propositions that the world is not round, it's shaped like a parallelogram [04:31:30] or equally stupid kinds of things, but it's cited a lot. People are just starting now to start to go out and look on what are called Master Sales Agreements. And what's happening to cope with international competition, it may take too, you don't just sell, you don't have a product sitting on the shelf that you sell. Now there's some of this, the paper for the Xerox machine is sold that way, but there are an awful lot of the parts [04:32:00] and components that a John Deere or a Harley Davidson wants that are designed for them, and maybe they can get two places to make them but they're not sitting on a zillion wholesaler's shelves.

And to get the status of being a supplier it basically means you open the doors, you pull out all the file drawers, or these days you boot it up on the computer screen, and show your [04:32:30] customer everything about your finances. Their engineers have total access to your plant at any time they want to go in and they can look at the [inaudible 04:32:41] thing and what you're trying to do is get collaboration and working things out to get new ideas. Okay this is the part we have now, how do we make it better, cheaper?

Now there's even been one case involving Whirlpool [04:33:00] where the Master Supply Agreement collapsed and they actually went to litigation, but that's not typical. The case that I may have mentioned before because I'm so impressed with it, Boeing built out of carbon fiber the Dreamliner, the 787, And they had sub-contracted out the supplier, somebody was building the tail, somebody was building the wings, somebody was building the fuselage, engines, et cetera, et cetera, et cetera, and they were to [04:33:30] be shipped to Seattle or is it Everett, I guess is the suburb where the Boeing plant is, and my son's description was, "It was a grand Lego kit. They were going to just snap everything together." They didn't go together. That it was just a mess. That these people couldn't figure out how to work with carbon fiber. It isn't the same thing as stamping things out of steel or aluminum. It's much harder to work with. They just hadn't done good engineering.

Well what did Boeing do? Didn't sue anybody. [04:34:00] What they did was they took over the plants, they sent their engineers out and just took over the seller's plants. Do this, this, this. Now as a result of it, they bought two of the plants, of the two suppliers are now part of

Boeing. The rest have had their plants all shaped up with Boeing engineers doing the kinds of things, do it this way, this way, this way, and so forth. Well all right.

I, at least, think that people are going to start looking at [04:34:30] this and maybe my 50 year old article might get a citation saying, "Well you know we started looking at it this way and when we look in the modern times, look at the changes from Macaulay's old article." Maybe I'll get that. But on the other hand, if you live in a university community, Bascom Hall and even the Kohl Center, I think [04:35:00] probably people remember who Herb Kohl was. How many of the undergraduates have any idea who Bascom was? How many of the faculty have any idea who Bascom was? So you don't count on being remembered very long, I think. But that, that's fine. If I nudge things a little, and got a few more people looking at how is law delivered and when and how does contract law work, and I brought that to people's attention as a major problem to [04:35:30] look at, well okay. They don't have to cite me for it. Maybe I made a contribution that way.

REEVES        So the follow up to that and I think you've answered this at various points, but is there a difference between what you want to be remembered for and what do you think people will remember you for?

MACAULAY:        Only in the sense that I'd like to be remembered as somebody who tried to help other people, tried to do what I could for my students, [04:36:00] and contributed something to a community. And that'll all be forgotten. It'll last for at least a few people out there and so forth, and that's fine. You do it because it's the way you live a rewarding life in the sense that you don't have to wince when you look in the mirror. The people who think that they did it all [04:36:30] themselves and everybody else is a loser and this kind of thing, I'm sorry, at the end of it they have the biggest pile of toys, and basically the contempt of everybody else. I don't know, that strikes me as, the interesting thing is many of those people go to church. [04:37:00] Can you think of anything more anti-Christian? Or maybe my Sunday school had it the wrong way around? I thought we were supposed [inaudible 04:37:10]. I am my brother's keeper. It's just I define who my brother is, that's where the problems come.

REEVES        Stewart, do you have anything? I always try to leave the narrator with the last word, so is there anything you want to say that you haven't?

MACAULAY:        After all [04:37:30] these sessions, I hope not, and this kind of thing. I just am, I think I've been an incredibly lucky person because I can't say I came to the University of Wisconsin Law School thinking it was a great place. I was hoping to write articles and get out of here. It turned out I had fallen down the rabbit hole to Wonderland and it turned out to be the ideal place for me. I always said, "I'm willing to move the minute [04:38:00] somebody offers me a better job." But I haven't found one yet.

Sure, tell me in March and I visit a friend of mine at UCLA and look at that, it kind of looks like, except all those people that have moved in to an area that I remember it [inaudible 04:38:16]. No, I'm fabulously lucky. I'm lucky in who I married, I'm lucky in my kids, but I'm also lucky in my colleagues and friends. And we had a group working on contracts here, [04:38:30] and basically it was fun to come to work. Now I don't want to say that there weren't

fights and frictions and differences and all the rest of it, but look that over that long period of time. I was just so lucky to have people you could talk to, you could exchange ideas, and who would make my work better. That's the delightful kind of thing. So I lucked out.

REEVES        Well [04:39:00] Stewart, thank you so much for the time you've given me over these sessions. I do appreciate it. So this concludes the oral history with Stewart Macaulay. Thank you.

MACAULAY:        You're very welcome.