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Interviewer: David Brooks  
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David Brooks: Okay, it is July 27, 2006, and I am David Brooks, the interviewer for the University of Montana’s Oral History Project. Today I am talking with Robert Sullivan, the longtime dean of the law school at the University of Montana.

Robert Sullivan: I’ve tried to compress in a short time the 25 years. I can’t believe I’ve been here that long. But, in looking at it, it seems to me that there are several phases or components, okay? For example, the beginnings. It [the law school] was authorized by the board of education in 1911. At that time the supreme court of Montana, without any insistence by the university at all, they issued an order to encourage people who graduated from the law school here to stay in Montana and practice law. That order has been referred to the diploma privilege, which is a bad explanation, or a bad term.

So, under the diploma privilege the law school certified graduates for the practice of law and the supreme court swore them in. So we were the admitting authority, you see. That’s a hell of a responsibility. So that was just it, that was a part of the law school creation. Nobody paid much attention to it; it was just pro forma, you know. The law faculty would meet after all of the grades were in the senior year and they would recommend to the Supreme Court that these people be admitted. The attorney general of the state would get up there and present them to court and move their admission and that was it, okay?

Now, it came to be quite an issue some years after I was here. A Montanan who had gone to Yale law school brought a suit alleging that this was discriminatory and that here he was, a Yale graduate, and he had to take a bar examination when all of these non-Yale graduates had a free ride, so to speak. Lots of litigation on that point, all the way to the United States Supreme Court on one occasion. Uniformly the court said this is not discrimination; this is laudable objective and so forth.

In my years here I was very active with the Bar Association. I was admitted to practice in Montana by examination after two years of law school at Notre Dame. I was called to service and so they gave a special bar examination for two ROTC people here. My dad heard about it and so I took it. Three of us passed and we took two years of law school; nine others who had taken it previously didn’t make it. So, I am familiar with the bar examination in a way and I was active in the movement when the Supreme Court changed the voluntary bar to a unified bar, which meant that every lawyer practicing in Montana was a member of the bar association whether he wanted to be or not, you know? That happened in 1975.
That’s just by way of an aside, but it seems to me we might—I’ll listen to your general questions and we’ll go into that. It seems to me that there were the beginnings, okay? Then it seems to me there was a transition to a graduate professional school. And then it seems to me that a law school, with this involvement with the legislature, the Supreme Court, the bar association, would become kind of a legal center for the state. It didn’t mean we were abdicating our primary responsibility, but we were very active in the legislature. There’s an organization that was formed in 1882 called the Uniform Laws Conference. The chief justice of the Montana Supreme Court and Alex Blewett, a lawyer/-legislator from Great Falls, and I were appointed commissioners in 1957. We were very active in getting those uniform laws passed in Montana.

So, a part of the outreach, and I am not talking about Bob Sullivan, I’m talking about the vehicle, Uniform Laws Conference and these three individuals who had these uniform laws, worked with the legislators and bar association, interested parties in getting uniform laws passed. At one time we ranked number one in the United States in terms of the total number of uniform laws passed. I’ve been retired from that for a while so I am not directly involved in the operation of that anymore. What I am saying is that a lot of the things in this (?) center concept flowed from the expertise of the law faculty, flowed from their involvement as faculty members in emerging and growth of the law and so forth. An exciting time, you know? So I am pleased to be able to fill in some of the blanks.

DB: I guess the first blank I’d like you to fill in, and you know you are talking about very broad things about law in general and the University’s law school’s place in that historically, is just your own personal and educational background and how you came to the University of Montana and the law School.

RS: I was born and raised in Helena, Montana. Graduated from the Catholic high school [Mount St. Charles], Catholic grade school there. Then I took my college and law at Notre Dame. I played football there and played a lot of football there, but anyway. I was on the traveling squad in 1938. We played both ways, you know, there were only three teams, plus three others. Well, I was the third-team right guard my sophomore year. Then the following year in spring practice I was the first-team right guard, but I got hurt and that was the end of my playing days. But then I was able to get a graduate assistantship to help coach the freshman football team and that enabled me to go to Notre Dame Law School.

Well, I went there two years and then got called into service. Came back from the service, went back to Notre Dame on the GI Bill, got my law degree. Practiced law in Ohio briefly and then I got an invitation to go to Notre Dame to teach in the law school. Well, I did. I taught there for seven years and developed a background in oil and gas law and wrote a book that Prentice-Hall published. So, a man that helped me get into Notre Dame—knew [University of Montana President] Carl McFarland very, very well, in fact he worked for Carl McFarland in the Department of Justice when Carl was an assistant attorney general, he called me one day when I was in Notre Dame and he said, “Carl McFarland is here and he is looking for a dean of the law school and a professor of oil and gas law. I’ve told him about you and he wants to meet you.”
So I went from South Bend up to Chicago and met Carl and he asked me to come out to Montana.

I came out and was interviewed by a committee of University faculty and some lawyers. He offered me the job. [Sullivan was first hired as assistant dean in 1954 and became dean in 1955.] Well, my roots in Notre Dame were very, very deep. I was in the law school seven years, my wife and I were married at the log chapel, several of our children were born in South Bend. But I was encouraged by the vice president of Notre Dame to come out to Montana. He said, you could probably do more for your profession and your faith in a public law school than you could if you stayed at Notre Dame. Go try it for year. If you don’t like it, come back. Well, we came for one year and it turned into 25. So that’s how I happened to come.

My experience at Notre Dame: I had taught a lot of courses, but hell, I never thought I’d be a teacher, so when the time came to teach I relied upon my professors who were still there, who monitored me and assisted me. I had not practiced long enough to really know what practicing law was like. So I started to experiment a little bit and the study of law, prior to World War II, was through the vehicle of decided cases. Professors would develop what they would call case books. They might find a case that would illustrate that there has to be an offer and an acceptance in order for there to be a valid contract, okay?

So, they would find this case, and hell, this case might have points on procedure and evidence and everything else. So they would digest the facts of the situation just as they were related to offer and acceptance and contract and put that in a case book. There were cases, case books for particular subjects, you know, like property, corporate, and so forth. I wound up teaching property, which is a very difficult course to teach because it goes back to the common era and so forth and so I—and the case book was a great case book by a man named Egler, a professional at the University of Michigan. In some instances of the law between property there were concepts that maybe it would take a month of discussing different cases to get the wholeness of the concept.

What I did I thought, you know, I drafted a problem, a property problem, and I put all of these things in the problem and then I gave the students the problem with a few citations to cases or a treatise. We’d come into class and I’d say, well, what about this? Somebody would maybe talk about this and that. I found that in two class session I could get the meat out of every complex part of that concept and you could see the whole of it without just concentrating on what was the intent and so forth. Am I making any sense?

And so I started using what I call the problem approach. I used that throughout the property course. When I came out to Montana I had written this book that Prentice-Hall had published and one of the courses I taught here was oil and gas law. So I used the problem approach and it was a senior liberal course, and so I’d hand out these problems. I’d say well now what’s—we would talk about property, talk about ownership. Oil and gas were discovered as a byproduct for drilling for salt back in Pennsylvania in the mid-1850s.
They saw this damn gooey stuff that just polluted everything and the thing that happened was that here were, here was a stream running through this big tract of land and there were different owners, you know, bordering this stream. This one fellow who drilled the well and got oil in it, they found that, well, they had been using whale oil, you know, and here was this stuff that could be more economical. This one fellow—say here's the dividing line, A is here and B is here. So A drilled a well right near the boundary line. Thank god he found oil, didn’t go down very far and they were both farmers and they both knew that in the subsurface that water moves, called percolating waters, okay? So this guy here says, part of that oil is probably mine. It is sucked out over the boundary line. So he sued and the court says, well, who owns it, or what is it? Well, there are things called in the—we characterize things as being animal, vegetable, or mineral. It’s not an animal, it’s not a vegetable, it must be a mineral. It is a peculiar kind of mineral that kind of moves, not like coal or copper.

There had been a case in England many, many years ago about percolating waters and the court decided that the person who reduced it to possession became the owner; it was called the rule of capture. So the American court applied the rule of capture to oil. Well, you know what happened; he said, well, what am I going to do? He said, drill a well of your own. So if this well is over here there will be another one here like this. Anyway, I would in that senior class say, what is this thing? How does it fit into the classification of rights that can be owned; whether they’re owning the land or owning the right to walk across land, like an easement. I kind of needleled them ‘cause this was a basic a first-year property course that they’d already had two years before and couldn’t figure out what it was. Finally, I said well, you know, it’s a substance really and with that substance there is the right to take. Now that right to take can be divided. Somebody who owns the surface can sell the minerals, either solid minerals, or oil, or gas. I said this is what they call in the law process ‘an incorporeal hereditament.’ [An intangible right, which is attached to property and which is inheritable.]

Well, that means that—it tells what it is now. It is not an easement, but it is the right to take. One of the students told me years later that he was with a bunch of lawyers up in Canada and there were involved in a huge, complex sale of oil and gas rights. After they had put the whole thing together they were having a martini and kind of talking; you know there were lawyers from Yale and Harvard and all over the place. Somebody said what is this? What is this right to take we have kind of carved up? And C.J. Hansen, now dead God love him, he said, “That is an incorporeal hereditament.” He said, “Where the hell did you hear that?” But they talked about it and that is what it was. So what I am saying is that I found teaching was fun, though I intended to be a lawyer; never got around to doing that until 25 years later.

That is how I happened to come to Montana and when I came there were six faculty members, four fulltime and two part-time. As we grew over the years we got to the point where we limited the first year class to 75, total of 225. They are still doing that because we didn’t have the [unintelligible] of the faculty. Well, that faculty had grown from six fulltime to 17 fulltime,
and from two part-time to three part-time and a student body of 225. That’s how I happened to come to Montana.

DB: Before we started a taping here you were telling me a sort of personal story about your relationship with Carl McFarland and how you were actually hired. I wonder if you could retell that as well as you have talked a little bit about your teaching, some of the methodology of your teaching, how you changed things. Talk a little bit about relationships on campus when you first came here, maybe in comparison with your experience at Notre Dame, between all faculty—

RS: We haven’t been taping at all?

DB: We have been. [Talk about the relationship] between both you and other law faculty as well as between law faculty and the rest of the school.

RS: Can I tell you a little bit about how I came to Montana?

DB: Yes, I would particularly like to rehear the story about your relationship with Carl McFarland and being hired.

RS: Ok, right. I’ve told this and everything I’ve done and about Duke Crowley and the law school. I think I’d better tell you it as well, but I’d better put a lid on it, on this particular part of it. I was born and raised in Helena, Montana. I went through grade school and high school there. Then my grandmother, god rest her soul, born in Ireland, died and left me money. My dad said, how would you like to go to Notre Dame? Well, there was a Notre Dame graduate in Helena by the name of Billy Jones and he helped me get in. So, I went back there and I had already started college at Carroll College in Helena, but I was in the National Guard and they had a huge earthquake in Helena in 1935 and they mobilized us to be auxiliary police at night. After being up all night for three weeks and falling asleep in class, in the meantime I just dropped out of school.

I had an uncle that was a gold miner over at Marysville so I went and worked for him. I lived with my grandmother and her three bachelor sons and then I went back to Notre Dame the following year. I majored in criminology and then I thought, now what the hell was I going to do with that? So, I wrote to Bill Jones, I said, could I come to Washington and get a job with the government and go to law school at Georgetown? He said, “Oh yeah, you can come; I’ll help you. Why don’t you go talk to your football coach Elmer Layden, who was one of the Four Horsemen, and see if you can’t be appointed graduate assistant to help coach the freshman football team.” Well I did and I got the job. Partially I think because I was injured my senior year and didn’t play very much.

First year, Layden’s contract was not renewed and they brought in Frank Leahy from Boston College. He only had four coaches: Leahy, the head coach, [Edward] McKeever, the backfield

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coach, Johnny Druze, end coach, Jimmy [Joe McArdle], line coach. So he dragged another graduate assistant and I from the law school and we helped coach the Notre Dame football team during spring practice. Then he brought us back in the early fall and we coached there.

I had a low draft number in World War Two and I was deferred before Pearl Harbor and if I could have stayed in Notre Dame a fifth semester I could have got my law degree because they had a rule that if you were there five semesters and were called they would give you the law degree. Well I wasn’t deferred so I went into service and came back and went to Notre Dame for a year and got my law degree. Practiced law in Ohio briefly and then was invited to come back and teach law at Notre Dame. I went back not knowing what a law teacher does, depended upon my teachers, some who were still there. I didn’t know what the practice of law really was either but I had some ideas that I used teaching at Notre Dame that I found helped me a lot and helped the law students a lot. When I was at Notre Dame they gave me a stipend at each end of two summers to go down to Tulsa, Oklahoma, and learn something about the oil and gas industry, because they wanted to teach a class on oil and gas law at Notre Dame and that is how I happened to do that.

Well, then I got an invitation to go to Bismarck, North Dakota, to join a law firm and [drillers] discovered oil in North Dakota, Tioga, and nobody knew anything about oil and gas. So I didn’t want to live in North Dakota, but I went out there as a consultant. That’s where I got the idea about writing this oil and gas book. Well Prentice-Hall published it and I was just winding up all the details of it when I got a call from Billy Jones. He said Carl McFarland is here looking for a dean of the law school and a professor of oil and gas law; he’s the president of Montana State University [now the University of Montana]. I’ve told him about you and he wants to meet you. So I went to Chicago, met Carl as he had a stopover on the train.

He invited me come out to Missoula. Dean [C.W.] Leaphart had retired and they were looking for someone to be the dean of the law school. I came out of this interview and he offered me the job. He says, “You know,” he says “you’re an associate professor of law at Notre Dame. I can’t bring you out as professor of law at Montana and dean of the law school.” But he said, “I am a lawyer and I teach a course at the law school. So what I’ll do, I’ll be dean of the law school, you’ll be the assistant dean. You’ll do all the work. And he said within three years’ time you will be dean of the law school.”

I came out on August of ’54 and I was named dean in April of ’55, on the recommendation of Carl McFarland. Now, Carl was a graduate of the University of Montana Law School. He worked in Main Hall in the president’s office while he was in school, so he knew a lot about the university. When he graduated he practiced briefly in Helena and then went to Harvard and got his S.J.D. degree, which is the pinnacle of degrees in law, like a Ph.D. He—for his thesis, he chose the topic “Of the Use of Administrative Agencies in the Operation of Government.” [Administrative Agencies in Government and the Effect Thereon of Constitutional Limitations.] Well, it was a best seller in a sense, printed in the American Bar Journal and he got the Ross...
Prize when he was still in his 30s, which is for the most prestigious article in the journal for that year.

Homer Cummings, the Attorney General under Roosevelt, hired him. So, what Carl did, he was the artisan of the Federal Administrative Procedure Act. He later wrote a book and was with the government for quite a while then. He left practice law in Washington and had a couple of big Indian cases. Then, John Bonner, the governor of Montana, knew Carl, and Bonner was the—Board of Education consisted of the governor, superintendent of public instruction, attorney general, and seven appointed members. Bonner hired Carl to be president of the University of Montana without asking anybody else.

That didn’t sit very well, but he came and he had been here about three years or more when I was here, when I came, when he offered the job to me. As is the case with many people, scholars, researchers, and others, you develop a capacity of such intense concentration sometimes that you’re just oblivious to everything around; well that was one of Carl’s attributes. He didn’t have what I recall as social graces, you know, of this diverse group on the state Board of Regents—State Board of Education.

There was a president of MSU by the name of Roland Renne and he was a great president and he was very aggressive. In those years there wasn’t any Board of Regents. What the practice was is that each president presented their own budget to the Board of Education, which would approve. Then they would have to go to the legislature—the president—and sell the budget. So there was a lot of jockeying back and forth between Renne and the McFarland. Renne came in one time and got authorization for a Ph.D. in chemistry. Sometime later Carl came in with a Ph.D. in chemistry. Duplication. No, no, no, MSU is industrially oriented, people are going to—at U of M, that’s research-oriented.

So I think that Carl was kind of uneasy, pardon me, some on the board were uneasy with Carl because he kept his cards pretty close to his chest. I came in ’54 and Bob Pantzer was hired by Carl a couple of years after that to be the chief finance officer. He’d been a president of the Alumni Association, practiced law in Livingston. Anyway, Carl put his budget together for this one year; well, let me back up a minute. Carl was a brilliant person. This was a good university, but he wanted to make it a great university. There had a been a time in years previously where a president had gotten in some difficulty with the faculty, I guess, and the law people in town got involved and it was just a real mess, and he wound up getting fired, I think.

There had been a tradition here that—these are my words—the faculty wanted the authority, but they didn’t want the responsibility, you know? So there are all kinds of committees, there was a committee on grounds for example, and a committee on landscaping. The building we were in had originally been the library and then—it’s one of the big [buildings] on the Oval with the big pillars. It was finally the law school. It was kind of itinerant, in different locations and in 1954 the Alumni Association moved out of the basement and so the Law School had that whole building.
One summer we returned to campus and I think it was, I think I was here at the time, but there was a road, you know [that circumvented the Oval]? You come up University Avenue and you can drive on the campus and there was a dirt road that circled the Oval so you could drive up, drive up in front of Main Hall and park, or drop somebody off, or pick somebody up and then go on out again. Well to the consternation of townpeople and alumni and everybody else, during the summer Carl had closed the road. Then there was a brick building that is no longer in existence that was kind of a mini-observatory and was also used by Associated Women of the University of Montana. Well, he got rid of the road leading to that, not in the same year, but next year. He also closed the road from Van Buren from the bridge all the way into the heart of the campus. In front of the law building he took out some bushes.

Well everybody was just mad as hell at him, you know? Asked him where did he get that authority and so forth. So, he was not popular in the eyes of many people on the campus. There was plotting about how to get rid of him and so forth. Anyway, in 1958—now Carl McFarland brought me in here and I think that people looked kind of askance at me because he had brought me in here. The interesting thing was that on the law faculty there was a man by the name of David Mason who taught here, my god, 25 years or more. He had his S.J.D. degree from Harvard. A great teacher and when Dean Leaphart retired there was this great expectation that David Mason would be named the dean.

Well, Carl had other ideas; he wanted to bring in somebody from the outside and interviewed widely, I’m sure. So when I came here as dean I was the wolf in a hen’s nest. I had people tell me that they had never met me, but didn’t like me. People would say to David Mason, you should have been the dean. Well, the dean of New York University Law School in New York City was a grad, Russell Niles, was a graduate of the University of Montana and he asked Carl, or he asked David to come back there and teach for a year. David was teaching among other—teaching some of the business courses, bills and notes, sales, things of this kind.

Uniform Laws Conference had promulgated back in 1952, I think, a thing called the Uniform Commercial Code that took about six different acts and welded them together. Got passed in Pennsylvania; that was the only state that had passed it because a man by the name of Schneider, who was a Uniform Laws Commissioner and was on the drafting committee, he was from Pennsylvania so he got it ramrodded it through. But there had been a casebook using that and David was using the casebook on the Uniform Commercial Code. This is a great law school and they didn’t teach us Montana law, they’d use these national casebooks and then they could supplement it with Montana law or something unique.

So, he went back and taught there and Russell Niles wanted to keep him there to be the foremost expert in the United States on the Uniform Commercial Code. Well, David, I saw him in December at a hiring meeting of law teachers and he said, “Well, he and Helen had talked about it and they really wanted to come back to Missoula.” I said that would be great. He said, “Well, Helen and I want to come back and I am not mad about not being dean and so forth.”

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Well, hell, he was my biggest supporter. People would come to him and say, “Well, what is that damn Sullivan doing now?” and Dave would say, give him a chance, give him a chance.

Anyway, here we roll around to 1978 and I’m dean you know since ’55 and so I am pushing as much as I can for the law school. Our salaries were not as high as they should be and the legislature sometimes—god, one year my salary increase was $50 for the year. And so I was pushing, you know? These were in the transition years when we were moving from beginnings and the post-WWII crush of people coming back into the beginning of a graduate professional school. I was making some people mad with saying, well now, we are different. Well there wasn’t any graduate school, they had a name and an office over in Main Hall, but the people that taught graduate courses also taught undergraduate courses. There wasn’t really—there was the concept but it wasn’t really fleshed out. It wasn’t like pharmacy, which now has doctoral programs, and history.

Anyway, Carl put the budget together and went over and presented it. It had some pretty good salary increase recommendations for faculty. I am not talking about law faculty, university faculty. Well, the board was resistant, you know. One of them said, “I know they are (lay?) people, most of them.” One said, “If you want to do that why don’t you go back and lay off all those non-tenured people and take that money and you can give the salary increases you want.” Carl said, “I’d resign first.” He got on the stump. We had been there alone and on the way back he thought he was a little bit hasty. So, we called and he said, “Well now, I didn’t resign.” They said, “Well we considered it a resignation and we are going to have a meeting and we will call you over to talk about it.”

A couple of weeks later he asked Bob Pantzer and I to go with him to Helena. We were there at the meeting and he made his presentation and everything else. They said, the three of us were excused while we deliberate this. So we went into the attorney general’s office, which is right next door to the conference room, and we were sitting there talking and Forrest Anderson was the Attorney General, who later on become the governor of the state. He walks in the door and says, “Well, that’s the way the ball bounces; you’re done!” Well hell, we were stunned and we came back [to Missoula] and lots of celebrating among a lot of the faculty here who hated McFarland’s guts. I’ve already given to the university copies of the newspaper and the Kaimin containing three letters; one written by Leif Erickson, who was a part of the Democratic Party, one by a student who wanted an explanation of what went on and why this was done, and one by somebody else.

Forrest Anderson’s reply was, “If all we had to do was sit around and listen to complaints we would get nothing done. This doesn’t even merit talking about.” So, Carl came back and the Board of Education appointed Gordon Castle as the acting president. The interesting thing was that subsequently Gordon Castle came over to meet with the Board of Education about the budget; they approved the budget that Carl had recommended in the first instance. Gordon served for about a year and a half I think.
Now, I’m kind of out of context with this, but I mentioned to you earlier that the— one of the things that the law school provided [were] lots of services within the University, outside the University. A federal district judge, a lawyer, graduated from this law school, William Jameson, a partner in a big law firm in Billings, Montana. He had been for years a member of an organization called the Uniform Laws Conference that was formed in 1882. The federal constitution, and I am not quoting verbatim, has a provision that the powers not given to the federal government are reserved to the states. This organization was formed to step into the gap and they wanted a uniform law in marriage and divorce, but they never got that done until decades later.

Anyway, this organization formed, called the Uniformed Laws Conference, and say organizational lawyers, practicing lawyers, law teachers, government officials. Bill Jameson had been the only—there were three commissioners over the years, but when he was on there he was the only one. He was nominated to be a federal district judge for eastern Montana. The interesting thing about all of that was that there was a sitting federal district judge for eastern Montana by the name of Charles N. Pray. Charles Pray had been educated at the University of Chicago and he had been a county attorney up in Fort Benton when there were only a very few counties in Montana.

One time he had about 18 people on death row that he had convicted. Well he ran, he was elected to Congress. He was the person who put in the legislation that formed Glacier National Park. He was appointed federal district judge by Calvin Coolidge; this was back in the 1920s, okay. When I came here in 1954 he was still serving. In fact, he served until Eisenhower was elected president because he was going to wait until a Republican was elected and hell, he was in his 90s. Bill Jameson was nominated to succeed him. Bill Jameson wrote to the governor, Hugo Aronson, and said, “Now, the Uniform Laws Conference...” and explained what it was, how important it was and how Montana had relied on it in many ways in adopting uniform laws. He said, "I think that you ought to have a broad-based commission in Montana. It should have a chief justice of the Montana Supreme Court, it should have a lawyer who is also a legislator and you should have the dean of the law school."

Well, Governor Aronson in 1957 appointed the three of us as Uniform Laws Conference members. Now getting back to Carl McFarland, he was terminated in 1958. Well, before termination, maybe his last official act, he had a legal secretary who had been with him maybe 25 years, by the name of Gwen Folsom. He transferred her budget line from the president’s office to the law school so we had her for a year, ’58 and ’59. She was brilliant; she worked with David Mason and they prepared the Uniform Commercial Code for introduction in the state of Montana. I had enough money to—now those were the days when if you wanted more than one copy of something you would use a stencil, blue, you know? So you’d type it and if there was a mistake it was a hell of a deal trying to correct a stencil.

She did all the research, read all of Montana law from the constitution all the way through the law, and checked with David Mason where something was different. I knew a law commissioner

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from University of Chicago, Sonya Mechnikov, whose husband who had been the director of the Code Commission. Anyway, she prepared it and ran off 150 copies, one for each legislator; it was that thick. The legislative rule at that time was that if you were going to amend an existing state law that there was something in the existing law you had to delete. What you would do, you would print the bill and it would come to the matter to be deleted you would put parenthesis, delete, closed parenthesis; not even mention what it was and pick it up again.

So she did that in this draft. We had it all wired to pass but it was so damn thick it would have used up the whole damn printing budget of the business and industry committee, so they said we will get it done the next time. So I went back and grabbed a few copies of it and had some and when the next session came up, the legislature changed the rule. They said, “You can’t just have it omitted, you got to print and then strike through the part omitted.” Well, Gwen Folsom was long gone by the time the session started and I didn’t have any money to do it. So Dan Dykstra, trust officer with the then Union Bank and Trust Company, was the chair of the Business and Industry Committee and he was able to get unanimous consent of the legislature to waive the rule for this bill and that is how we got it passed.

What I am trying to say with all this verbiage that Carl McFarland was a brilliant man and he was done a dirty damn trick by the Board of Education. There, I’ve talked about this in a little more detail in an oral history I’ve done for the Law School on my 25 years there that I cannot be made public until after I die. I’ve kind of skipped around a little bit. Carl, among other things, you know about building fees? Well, he was a great user of building fees. Among other things, he said students ought to have something to do besides go to school; they need some recreation. And so they built the swimming pool, built the ice rink, with student building fees. They didn’t take care of the ice rink and that went down the tubes. Then he looked at the dorms and he said you know the utilities are all in there so why don’t we just join them? That will give a few more rooms. Well, that is not an architectural thing of beauty, but that’s how it happened you know? Is that enough of that general question?

DB: Yeah. You haven’t mentioned where the law school was at the time you came, and also along the lines of physically where it was, something that I have often heard about the law school is how sort of insular it is compared to other departments on campus. I guess I would like you to speak to that a little bit. Was that the case when you came, has it always been so, why so?

RS: Well it had a transient existence space-wise. It was up at Main Hall at one time. I’ve mentioned that when I came in ’54 it was on the Oval in that building that has the big granite spires. [Now Jeannette Rankin Hall.] Carl McFarland said to me, “You need a new law building.” So I wrote to one of our accrediting agencies, the Association of American Law Schools, they had a whole file of stuff. I got copies of them and looked at them and the one at the University of Wyoming looked like it was interesting. Got the faculty involved, sent over a plan for a law building. He sent it back and he said too small, gotta be bigger. That was in probably 1956 or so. I never heard from him after that and of course he went by the tubes, you know?
Then one of the presidents was a man by the name of Harry Newburn. He had been president of the University of Oregon and Oregon had a law school. So he knew what law schools were and how they fitted into the scheme of things. So when he came he wrote a memo to each of the deans saying that I want you to tell me what is your highest priority. Well, I went to my files and took out the memo to Carl McFarland and changed a few names and sent it over. There were enough unused building fees at the time that he authorized an addition to the Board of Education building [list] and authorized the building of the law school.

The law school—we moved in there in 1961 and it was located across from the Music Building. At that time that whole block was all residences and was across from Health Services and across from the Music Building. But while Carl McFarland was still here he was a great visionary and he said to me one time, he said, “You know, the concepts of the Inns of Court in London, that’s where they teach lawyers to be lawyers. What they are, are the living quarters where lawyers-to-be live and then they have practicing lawyers who come in and they’ll eat and they’ll teach.” He said, “There’s a house down here that’s on the market that would be a great Inns of Court house.”

Well, it’s the president’s house and it had been built by a man by the name of [Nels J.] Lennes, who was a mathematical professor and who developed workbooks for arithmetic and the royalties from that built the house. Most of the stuff in there is imported from Europe. He sold it. It was bought by a doctor by the name of Preston, who lived in this (?) house up here. Well he found that it was more than he could chew so there was some talk about a mortuary being interested in it, but people in that neighborhood were not too interested in having a mortuary there. So Carl bought it for the university. It became a residence for single law students and housed about 18 of them.

Then we had memberships that we asked lawyers, judges and visiting dignitaries to come down and have dinner with the students; visit with them about things. That lasted about three or four years and then we got to a point where there weren’t that many single law students. So Carl sold it to the Diocese of Helena for a Newman house, for single Catholic students with a proviso that if it were ever to be sold, Montana University would have the first crack at it. Then they built the Newman building kitty-corner from it and so it wasn’t just economically feasible, so the University bought it and it has been the President’s house ever since. When they built the law building, the new law building, Harry Newburn said, “You know that you’re going to have a hard choice to make”... [Coughs] Pardon me for a minute—

[Break in audio]

Let me slip over into something else, still talking about the law building. There was enough money to build the building and it really is an interesting building. The architect was Bill Fox, long since dead. The contractor also had the contract on the education building. This is the first
time that he had used precast concrete for construction. They call them channels and they are about this wide and maybe from here to there, to the door over there.

DB: What would you say 20 feet; 3 feet by 20 feet?

RS: I think so. They kind of come down so they got legs, you know, the whole length on each side. They brought those things in and that’s the floor of the law building, that’s the second story of the law building, that’s the roof of the law building and so it went up pretty darn fast. But, we had a board of visitors at the law school—that is another thing that Carl said, he said you ought to have an advisory board, independent of the president of the University of Montana.

So I got Republicans and Democrats, big firms, small firms, alumni and non-alumni, and they’d come in and I’d bare my soul to them; tell them what was going on and so forth. There was a time under a president by the name of [Richard] Bowers; he came into the interview and I think a law faculty member was in one of the interview sessions and gave a glowing report of his background and all. Then he met with some of the people who didn’t have any great love for me and he said, “You gotta put Sullivan back in his cage.” Our relations were cordial, but it came down to the point where accreditation entered into the picture.

Now we’re accredited by the American Bar Association, Association of American Law Schools. The American Bar comes in and visits periodically, once every five years. The first time we were accredited when I came here was in 1957, so that was four, three years after I came. When I came the entire university except for the School of Mines in Butte was on the quarter system. I am a semester guy. One of the things we did right off the bat was to look at the curriculum and in law courses, there is one examination that counts 100 percent. In the second year of law study they were taking six courses twice a week and the exam was in June. I didn’t think that was very pedagogically sound. We were talking about what can we do to collapse some of these courses and David Mason, God rest his soul, said, “Well, what you want to do you can do with the semester system” and that’s how the semester system was born for the law school. So we developed the curriculum, turned everything upside down. We came up with a curriculum where everything the first year was required, everything the second year was required, and all but about 10 hours in the third year are required.

Diploma privilege, okay? We were the admitting authority and so our objective was not to educate lawyers about Montana law, but our objective was to provide an education where they could practice law anyplace. But, we were educating for the practice of law and that meant that they—when I came, the quarter system, well I am not blaming anyone on that—but when I came classes were Monday through Friday and some were clustered, so you would have one class in the morning and another in the afternoon. Sometimes you could go to class and sometimes you wouldn’t.
Ok, here you got all these required classes and I made out the schedule and, of course semester system, three, three: You'd have Monday, Wednesday, Friday, and Tuesday, Thursday, Saturday. So we had Saturday morning classes, I taught a Saturday morning class; I figured, well, if they are going to have to get up then I am going to do it. We always had an interval between classes, so classes would go from 8-9, 10-11, 1-2. Once we got them there we figured they would stay the rest of the day. Under the accrediting association regulations, you can’t be a full-time student and work 20 hours a week on the outside, so we put that in. Then you have to attend every class, can’t come in the first year, first class, come back and take the exam. You see that made me very, very popular among the students. But, it was part of our responsibility under the diploma privilege, you know?

Now, getting back to the Board of Visitors. So when Bowers came, the accrediting [agency] said, the accrediting board, they were—in 1957 the examiner described us as a graduate professional school. That was right up my alley and I use the phrase a lot. I can’t give you a date on Bowers off the top of my head but we had an accrediting visitation and they said that we needed more space. We were getting 200 to 250 students, 75 in the first year of class. They said you needed more space, so I made the pitch to Bowers and they had already decided in the Board of Regents what the priorities were going to be for buildings.

The accrediting association called Bowers and myself back to the meeting of the council in Philadelphia in February. They said, now what is going to go on? And he explained that it would be difficult and they’d know when they could do it. He asked me what I thought and I said well, the university has to decide if it wants a law school or not. If it wants one it is going to provide what it needs, if not then graduate the people that are there now, get a WICHE kind of arrangement like they have in medicine so Montanans can go to law school in Idaho or someplace else out of state. Let the legislature pick up the difference between out-of-state tuition and in-state tuition.

Well, Bowers wasn’t very happy with me; we came back and he met with the Board of Visitors. The Board of Visitors really put the squeeze on him and he says, well there is nothing I can do. Then he got busy, and he buttonholed legislators and others. They got it on the agenda and the legislature approved it but without any money, so they approved the building for $1,400,000 or something, but no money. If we wanted the building, we had to raise the money. Fortunately, Montana, parts of Montana are in areas of low employment, and Missoula is one of the areas, and so we, through the Governor’s office, we were able to get nine $900,000 towards the 1.4 million. Then we set up our own fundraising outfit and we raised the rest of it. The Board of Visitors were very adamant in terms of this had to be done and we’ll do all we can to help you. I skipped across several things, have I missed anything?

DB: Well, you know, you made me think about your statement earlier about how Carl McFarland came and saw this as a good university and wanted to make it a great university. How about yourself as a long-term dean of the law school, I mean you’ve already mentioned a number of changes that happened at the time you were there. What was you’re, if you had

Robert Sullivan, OH 408-008, Archives and Special Collections, Mansfield Library, University of Montana-Missoula.
one, overall vision or direction for the law school? You have mentioned that things changed to a graduate professional school, you got a new building and funding for that, you’ve talked about accreditation, your sort of changing in teaching methodology from—to the problem-based teaching, a move to semester system. What, if you can encapsulate it in sort of a grand vision or direction that you were leading the law school.

RS: Well, in lots of ways I had the best law school dean’s job in the United States. After a while I was able to get authorization for an assistant dean; until then I used to do everything. I used to admit people and I was the administrator. I could teach and I did a little bit of writing. I got deeply involved in continuing legal education as an aid to the Bar Association, but then continuing legal education of lawyers and alumni. We had programs, CLE [Continuing Legal Education] and SKI up at Whitefish that brought in a lot of money that we could hold conferences over in Miles City of someplace where maybe five of six people would show up. It was self-sufficient, the law school planned it, funded it.

Then as circumstances developed, there were things going—there was ferment going on in Montana at the judicial branch. The Supreme Court authorized the commission to adopt the federal rules of civil procedure for Montana courts. David Mason, a faculty member, was on that. Then through the Uniform Laws Conference we got the Uniform Commercial Code passed and then, we Conference commissioners, what we would do, the commissioners would meet once a year, 10 days, and we’d get together and look through the lists of things that we had not passed. We’d identify some and I’d go back to my faculty and see if there was a faculty member who would be interested in doing some of the background research and so forth.

There was just a huge explosion in the legislature bringing Montana laws up to date from what was known as the [unintelligible] code, which Montana adopted in total at the time when Montana became a state. It was developed by a man named Phela (?) in New York, but New York never passed it, California did. Montana picked it up almost in total. I remember there was one act that Montana was the only state that did not pass it and it was an act to simplify the transfer of stock ownership when there had been a death. A telephone company in Denver sent people up here to testify for it and I testified for it and so the assistant head of the business and energy committee was a non-lawyer, he was an oil man from Billings.

So, I explained the act. The act had the name, A Uniform Act for the Simplification of the Security Interests Transfers. I got done and he said, “Mr. Chairman, Mr. Dexler, I must confess that I was confused before I heard Dean Sullivan’s explanation, but now I am confused on a much higher plane.” The legislature, there was a lot of trust there you see? They accepted the uniform social code; they accepted other things, uniform probate code, working with the State Bar Association. There was a lot of trust that people didn’t have an ax to grind, that this was for improvement and so forth.

There were other things that we got into. Duke Crowley, God love him, is retired from the law school but he still volunteers there. He had been first assistant attorney general under Forrest

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Anderson when Anderson was the attorney general. Well, Anderson became governor and in 1969 he asked if Duke, [who] was a member of the law faculty, he asked if he could borrow Duke to read the bills coming out of the legislature and advise him what ought to be signed and what didn’t.

So Duke went over and then there was a lot of interest in reformation of the executive branch. There was some federal money available and so they got the federal money. Anderson appointed Duke to be the coordinator of a revision of the entire executive branch. There had been over a hundred agencies and Duke reduced them to 18 and it was adopted by the legislature. This was a huge, huge accomplishment that we got into by reason of the fact that Duke was on the faculty, you know?

I guess what I am trying to say, and I am probably leaving out a lot, is that I looked upon the law school as a responsibility to train people for the practice of law. The diploma privilege gave us all kinds of responsibilities and people said I was always defending it. Well, I wasn’t defending it, I was trying to live up to the responsibilities we had under it. So, one of the offshoots of it was, it was [students had to] signed this notarized statement when they applied [for admission], bring it up to date at the start of the second year, bring it up to date at the start of the third year, and bring it up to date the week before they were going to go over to be sworn in.

There was no inquiry into moral character and fitness at all. So, I talked to Carl McFarland and I said we ought to take a look at this. I looked around and got all kinds of ideas and put together this 18-page moral character and fitness questionnaire, which everyone had to fill out. We had one instance where a young man...we printed the oath that a lawyer had to take, and he said to me, “I’m a Quaker, I don’t believe in oaths.” So I contacted the Chief Justice and the Chief Justice says that’s ok, just have him affirmed. Maybe I’ve said this before: we turned down several people, one because he lied to us, but that was—we put that in because it was a part of our responsibility, it seemed to me, in terms of not only academic preparation, but also if there was something that would militate against admission it would be known right up front.

I don’t know that that statement pulled all that stuff together. We were very active in continuing legal education, as I said, and backing the unification of the Bar in 1975. But we raised the money for the new building. There were limitations in terms of time and this $900,000 from the federal government. We were really on a fast track to meet those conditions. So we set up a fundraising operation within the law school. Couple of the people here at the university that had experience, we borrowed them. As it turned out we raised enough money to not only build the building, but also to buy all the furniture for the building.

This doesn’t have any relevance to the university and probably sounds like I am tooting my own horn, but I—we had an extensive clinical training program in the law school. It all started in 1966, called the Montana Defender Project. Bill Jameson told us about it. He had a friend by the
name of—retired army general by the name of Decker, D-E-C-K-E-R, who was administering a huge Ford Foundation grant to improve clinical training in law schools.

We applied and got a grant. It was ongoing; it wasn’t just for a year. What we did, it was earmarked for Indian and non-Indians to provide defense in criminal cases and it covered eastern Montana. It was a summer program so we had students all over the place in eastern Montana. Then during the academic year, we had all kinds of students involved in going over to prisoners and talking to prisoners who wanted to have their sentence reviewed. Then we set up in the law school for seniors a kind of legal aid thing and people would walk in.

Then the Department of Justice, we were able to set up a summer program where the law students would work with county attorneys all during the summer. Then we had the criminal law research information center where we would have a faculty member at the law school would supervise students and if a county attorney would have a—would want some research done. You know, some of them, they were maybe the only lawyer in the county and they didn’t have the time or the library to do it in the first place. Well, they would write in and say, here is the problem. We’d have the law student under supervision of the law faculty member do the research and it kind of balanced the defense against the prosecution.

These things all kind of, they were kind of interruptions in a way, you know? I don’t use the word—I use the term, you know the terms I used with you before—but a lot of these things we didn’t plan and there it was and so we took the ball and ran with it. Looking back on it I think that there’s a lot of joy in working with young people and having a sense that the wholeness of the law school, its beginnings, its graduate professional structure, its law centeredness, that all of these things made a significant difference in the growth and improvement of it all.

DB: With that assessment of your time, of your career there, what about looking at it now? I mean you can virtually look at the school from your north-facing windows here where you live, and I know before we started our interview here you mentioned having read a recent article about the going ons at the university, so I assume you keep abreast of things there.

RS: Yeah.

DB: To whatever degree you do keep abreast of them what is your assessment of the law school and university now?

RS: Well, my intention is never to look back in the sense—that’s not the right way to say it. My intent is never to try to hang on; that when you’re done, you’re done. So when I went to work for the Montana Power Company after I retired, I never came back to the law school. I believe that a person who was in the position of dean should structure what he saw as necessary and so forth. In other words, I did not try to hang on as though what I did was best and it shouldn’t be changed. I have a lot of admiration for Ed Eck as the dean. Tough job and I think that some
notoriety connected with [law professor Rob] Natelson you know, which is kind of unfortunate, I think.

It’s a damn fine law school and I think it’s recognized nationally as one of the leaders in terms of hands-on clinical experience and training. They work hard at it and they do a great job of being able to find the wherewithal to get things done. When I was there I was sometimes in just a one-way dialogue with people, particularly in the Liberal Arts faculty, who quarreled a lot about accreditation, didn’t know what it was. Now, it’s by the board, accreditation has been great leverage in terms of getting things done. I don’t have any misgivings, I don’t think, and I don’t have any animosities. So, I think that it’s a fine law school, it’s recognized as being preeminent in several things they do. It’s a—they are involved in all kinds of research projects and have got a very good faculty. There are probably other things that I maybe haven’t even mentioned or glossed over, but I think that probably hits it.

DB: Great! Well I appreciate your time.

RS: I appreciate talking to you. Is there anything else you want to talk about?

DB: I think that about wraps it up for me.

RS: Okay.

DB: All right. Thank you.

[End of Interview]