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David F. Cavers (May 21, 1972)

C. Richard Arena

Oral History Interview

with

MR. DAVID F. CAVERS

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Cambridge, Massachusetts

By Dr. C. Richard Arena

For the Richard Nixon Oral History Project

ARENA: This is interview #1 with Professor David Farquhar Cavers, May 21, 1972, Cambridge, Massachusetts, Arena interviewing. Professor Cavers, may we begin by my asking you, so that we can orient your biography with that of President Nixon, to give the date of your birth, the place, and a brief summary of your career to date? I am thinking particularly of your formal education and your career as of the ending of your formal education.

CAVERS: I was born in Buffalo, New York, on September 3, 1902. I grew up in Buffalo. I attended high school there and then went to the University of Pennsylvania where I attended the Wharton School of Finance and Commerce, graduating from the University of Pennsylvania in 1923. I came from the university to the Harvard Law School where I was a student for three years. I was editor in chief of the Harvard Law Review in my third year, a circumstance which has some relevance to what followed later. I went from Harvard to New York City where I became an associate in the law firm of Rushmore, Bisbee and Stern. In that firm, incidentally, I spent a great deal of my short career there working under the direction of a partner whose name later enters into the Nixon story, Mr. [George H.] Mudge. He was the partner whose name in the various changes in the form of the partnership survived longest, and this firm was the firm which in its later stages Mr. Nixon joined when he came to New York.

My work in New York was terminated all too soon by the fact that I found myself suffering from tuberculosis. I went on leave from the office and spent some time getting myself back in shape, but finally it was concluded that I would do better to give up

metropolitan law practice and seek a place teaching. I applied for a graduate fellowship at the law school at Harvard. I found I was too late in applying but was offered a part-time instructorship, which I accepted, and my first law teaching was done here at Harvard. I left, however, the next year to go to West Virginia, and from West Virginia after one year I went to the Duke Law School. That was in the fall of 1931 when the school was being reorganized under the leadership of Dean Justin Miller, who had come from Southern California to assume the direction of the new law school. My colleague, Professor [Lon L.] Fuller, whom you will interview later today, I believe, came to Duke that very same fall. The school was not a new one in the sense of just having come into being at that time. It had been preceded by the law school of Trinity College, which had been established early in the twentieth century and which had been a small but good southern law school, long dominated by one professor.

When the university was enlarged as Duke University, the plan of establishing a larger school was created, and one of the objectives in doing this was to create a law school which would not be merely a local or regional school, but which would be a national law school. The faculty which was brought together in the early '30's was composed of teachers brought from all parts of the country. The student body was selected on the same basis. We were able at that time, which, you realize, was the depression period, to interest students to come to a national school, but one which was quite inexpensive. Our expenses were low and also our scholarship policy was liberal by the standards of that time. So, I think we were able to bring together an unusually capable student body with a combination of educational and financial inducements. I've never heard precisely what led Dick Nixon to select Duke and how the contact was established with the school, but he was, I think, rather typical of the student body at that time. At one time in the '30's I made a calculation of the states from which our student body came, and found that, although we had a student body at that time of about 125 in the law school, over thirty states were represented. I compared it with the student body at Columbia University Law School and found that we had more states represented in our student body than that great national school.

ARENA: It was, therefore, definitely not a regional school by any means as far as the students were concerned. Would that be true of the faculty?

CAVERS: Yes, that was equally true of the faculty. It was a national faculty. We had law teachers who had been experienced in law teaching from various parts of the country. Dean Miller came from Southern California and brought with him John Bradway, a Pennsylvanian, who had been teaching in Southern California. He initiated a legal aid clinic there, a true innovation in those days. And we had Claude Horack, who had been one of the

leading members of the faculty of the University of Iowa school. Professor Fuller, a westerner, had been teaching at Illinois before he came to Duke. So, we had quite a diversified faculty as well as student body, and I think a very able faculty.

One of the responsibilities that became evident I was expected to discharge was to establish a Law Review. Duke had no Law Review and, since I had the experience at Harvard as editor in chief of the editorial board of the Harvard Law Review, it was natural that [Interruption] when the law school at Duke was contemplating the creation of a legal periodical, I would be asked to have a hand in this. However, in my judgment Duke was not a place where it would be advantageous to start a typical Law Review, similar to those published in many other law schools. It seemed to me that it would be desirable for Duke to adopt some innovation in legal publication, and I submitted a plan to the faculty which accepted the scheme. As a consequence I found myself the editor of a new quarterly, Law and Contemporary Problems. The distinctive feature of the quarterly was the fact that each issue was a symposium on a problem of contemporary importance. The contributors were invited from not only law, but government and relevant social sciences and business, as the subject warranted. However, in order to give the students who would at a school having a Law Review have an opportunity to serve on the editorial board of the school's periodical, a chance to do the same at Duke, we also established a small publication known as the Duke Bar Association Journal, which was to be the medium for the work of the Student Bar Association, itself an innovation, and was to give high-standing students an opportunity to write on current cases comments similar to those published in Law Reviews.

In my own teaching, which was somewhat reduced by reason of my editorial responsibilities, I had no instruction in first year courses, and as a consequence did not have as close an acquaintance with the first year class as I came to have in the second and third years. As a result, my recollection of Dick Nixon as a student was simply as one of the members of the class whom I could identify. I would see him about the school, but had no real acquaintance with him. I can't remember now what teaching experience I was having in the second year. I think probably I was teaching in Land Transactions, a name we gave to a course in real property, following the first year Property course. I suppose he was a student in that class, but I can't remember. I suppose also that he must have been one of the students invited to contribute to the Bar Journal's comments on cases. The Bar Journal was published only twice a year. It was devoted half to the doings of the Bar Association; the rest of it to comments in case law. I undertook the principal responsibility of editing these. I think I may be able to find a copy of the Bar Journals of those days, although my own file is not complete. It was printed and circulated to law libraries, and I suspect the Harvard Law Library must have a copy of it. The student work in it was signed so, if Nixon had a comment on a case,

it would appear. I think in all probability he must have, and that I must have edited it. (I find that Richard Nixon published a signed comment on Cleveland Electric Illuminating Co. v. O'Connor, 50 Ohio App. 30, 197 N.E. 428 (1935), entitled "Application of the Inherent Danger Doctrine to Servants of Negligent Independent Contractors," 4 Duke Bar Association Journal 115-117 (1936). His election as president of the Duke Bar Association for 1936-37 was noted in id. at 64, and his name and title appear on the mastheads of both issues of Vol. 5.)

My method of instruction in connection with this case writing was to give these relatively short comments a very thorough going over with the student sitting beside me. Very frequently the student would write a proposition of law which on close analysis didn't make sense, but it would be obvious also what they actually meant to say. They would not realize that they hadn't said it, so one of the functions of the editor would be to demonstrate that fact. Usually it was an enlightening experience and made students conscious of the problems of expression, of accurate articulation of ideas. And I felt that while this was a painstaking, time consuming job, it was one of those instances where a teacher could have a feeling that his efforts were paying off.

I had a third year course in the Conflict of Laws, which was usually taken by a relatively small number of the class, and I'm not certain whether Nixon was in that class or not. In his third year, I chose as one of the subjects for a symposium in Law and Contemporary Problems the subject, "Financial Protection of the Motor Accident Victim," a subject that was alive then and is even more alive today. In planning the issue I looked for a subject for which I could invite a student writer. This was my policy. Although we had no Student Editorial Board for the quarterly, I tried where possible to have at least one contribution written by a Duke student, and in this case I requested Dick Nixon to write an article--not a case comment--on the early cases involving automobile accidents in the American courts, court decisions involving personal injury claims or damage claims which were a consequence of the horseless carriage. This, I suppose, was on the chance that we would see something interesting in the response of the courts; something that might have some relevance to the current day subjects. This meant, of course, a careful survey of all the reported cases involving autos during the early years of the vehicle. I can't remember what point in time we took as a cut-off point, but the result of this assignment was, I thought, a good manuscript but naturally one that called for some editing. So I had a rather extended experience of editing a Nixon manuscript, again trying to make it an educational experience for the writer. I think the end product was a good piece. I once praised it to a writer who did a piece on the younger Nixon for Life a few years ago. After I got through commenting on this article, he said, "Frankly I thought it was dull." Unfortunately, that is a typical lay appreciation of legal writing. But I thought it was a good piece. I have been pleased from time to time, not merely at the

recent class reunion but on an earlier occasion, Nixon has said I taught him how to write. I think that is an overstatement, but naturally one that I like to hear on occasion.

ARENA: On the question of your possession of, say, an article of the President edited by you, and any other correspondence you had with him, from the standpoint of aiding future students, future serious historians, would you give a resume at this point of the existence, as far as you know, of your own correspondence and any type of writing involving you and the President and their location?

CAVERS: Are you asking me this with respect to . . .

ARENA: . . . the Presidential Library, or really with respect to the serious historian who maybe some day would like to see some written work.

CAVERS: With respect to his writings in the period we're talking about?

ARENA: And everything. In other words, since he's become President. I'm just thinking of all the writings. Some day, as we noted in the beginning, this project does not touch on the post-political period of the President, but some day some historian will, and who knows who it will be. And to aid such future researchers, it would be helpful as I go along on this project to try to merely locate such papers, especially where a person such as yourself has had such direct contact with him.

CAVERS: I have no recollection of anything written which would bear on Nixon as a student other than these published items, Law and Contemporary Problems, which is now in Volume 38, is a standard item in law libraries, and his piece is duly indexed there, as well as, incidentally I've noticed, in his "Who's Who" entry which has for a long time had a reference to this published piece. As far as the work in the Bar Journal, that too is probably to be found in the larger law libraries at least, the larger university law libraries and, if you like, I can check it out and send you a citation to anything that is published by Nixon in the Bar Journal. It might also include some contribution of his in the Bar Journal's Bar Association section.

ARENA: I would appreciate that trouble, thank you.

CAVERS: The episode I have just described, the editing of the periodical is my last recollection of his work as a law student. Outside the law school I have a recollection of him as one of the leaders of the small student body, and I think it is an accurate recollection, also. I may be deluding

myself, but I recall having thought of him as one of those students at Duke who might well develop political potentiality. I didn't think of him as a prospect for the presidency, but we had a bright student body, a lot of personable, energetic, ambitious young men who for the most part were from small communities, and as far as I could tell were probably going back to small communities. We wondered how our contribution to their education would bear on the society into which they were going. Certain of them, it seemed to me, might supplement whatever they did in their practice of law with political preferment, running for office or appointment to governmental positions, because it seemed to me, and I'm sure to my colleagues, that these were people who could easily be projected for some leadership positions. With respect to Dick Nixon, this was reinforced by the fact that he had been able to secure preferment at the hands of his classmates, the students in school, who were appreciative of his qualities. He had the opportunity to take on the organization and direction of the Student Bar Association, which was designed incidentally to give to the law student a sense of the opportunities which working in bar associations might give him, not only for his professional advancement but also for advancing the causes that a good Bar Association can push.

ARENA: On that point, may I ask, would the Student Bar Association be a kind of junior copy of THE National Bar Association and imitate it in its aims and scope, and have nothing to do, we'll say, with the immediate problems of the Duke law students themselves as students?

CAVERS: It was designed primarily for the first of these two purposes, but at the same time it was seen as providing a vehicle for giving to the students an opportunity to exercise some responsibilities. For example, a bar association will have disciplinary responsibilities with respect to the members of the Bar. We had the view that, if we had problems coming up with respect to students other than academic, we could use the Student Bar Association Grievance Committee as a device for resolving those questions.

ARENA: As a matter of fact, Professor Cavers, I am sure one of the students that did become the president of the American Bar Association, I had the privilege of interviewing him the other day, Mr. Charles Rhyne, of Washington, D. C. Were there any others that come to mind of that period who attained equal distinction? Excuse me, I also interviewed a Mr. Holland, head of maybe the North Carolina Bar Association. I believe it was Mr. Holland.

CAVERS: Mack Holland [John Mack Holland, Jr.], yes.

ARENA: Mack Holland. There are two that come to mind from the standpoint of your being conscious as a faculty member of this class' potential as leaders. Evidently your hunches have not been disappointed.

CAVERS: I wouldn't limit to to this class. This class was typical in that respect of the students, and I don't put these students as distinctively better than good law students at other schools, but what had struck us was the fact, as I say, these young men had come from smaller communities and had sought out a national school. They were ambitious and seemed to have vision, and we wondered, as they went back to those small communities, what they might ultimately become. It was quite amazing to see the careers pursued by a number of them. We had in an earlier class a man who spent much time in the White House as counsel to the President for many years. He was also Undersecretary of Agriculture for some years, and a very prominent person in the Democratic Party. We had other people in this same class that you doubtless know. We had a student who went out to the West Coast and then came back to his home in Nebraska and now is in the Supreme Court of the state.

ARENA: I believe his wife is a fellow student of Duke.

CAVERS: Right. We had two couples in that class who married and both are very charming.

ARENA: Was that unusual for that time, that there were coeds in law school, in any law school in the country? Do you recall that coming up possibly in some of your discussions with the faculty and admissions, the idea of admitting women in view of today's interesting women's role in society?

CAVERS: We didn't have any qualms about admitting them, I'm sure. We were unlike Harvard in that respect at that time. Harvard didn't admit women as students. But we were pleased with the number of women students we had, and they were very capable. But this business of matrimony was unusual, I think. They didn't marry until after their law school careers.

BEGIN SIDE II TAPE I

CAVERS: Christmas vacation was something that was rather difficult for some students because the expense of going home was more than some could take care of. My wife and I were aware of this problem and tried to invite to Christmas dinner some of the students who were on hand by reason of this circumstance. I had completely forgotten the fact that one of our guests at one of those Christmas dinners was Richard Nixon. This was brought to

our recollection when we were guests at a party that he held in Beverly Hills [Calif] when he was starting his campaign to be Governor of California. Another Duke student who was practicing in Los Angeles [California] had been invited to the party and had known that I was a summer school teacher at UCLA [University of California at Los Angeles] at that time.

ARENA: Would the student from Los Angeles be a Mr. Edward Rubin?

CAVERS: Right. He alerted somebody to our presence here, with the result that we received a rather belated invitation to the party, after we had already accepted another invitation. So we went to the party early and as a consequence had an opportunity to chat for a few minutes with the Nixons on the receiving line, and to our amazement we learned that we had been host to Richard Nixon during, I guess, the Christmastime of his third year as a student. The thing that surprised us still more was his recollection not only of the occasion but of the cuisine, because he remembered the fact that my wife had surrounded the turkey with little white onions, which, I guess, add to the turkey dressing. This was a phenomenon that for some reason he had not encountered and he apparently liked them. It registered in his memory, and he came up with that recollection.

ARENA: For the record, may I have your wife's full name, please?

CAVERS: Her name is Lelia Yeaman.

ARENA: Thank you.

CAVERS: I think now I have come to the end of my recollections of his student days, and I have only one other recollection to report before his political career began and that was in 1942, when I had been editing a symposium of Law and Contemporary Problems on the emergency price control program, and as a result was going up to Washington from time to time to meet with members of the legal staff of OPA [Office of Price Administration]. On one of those occasions I ran into Dick coming out of one of the old temporary buildings on Independence Avenue. We had a chat in which he told me a little about his experience after law school and what he was doing in OPA, but I frankly can't recall any of the content of it. I became a consultant of OPA, even while I was still teaching, and ultimately I joined its legal staff and became Assistant General Counsel and later Associate General Counsel for Price of OPA.

ARENA: I just wonder from the standpoint of education and your particular interest in education, the idea, of course, that many of the courses and many of the things taken

up in school are to prepare people for the unexpected in a way. I am sure the OPA would have been an unexpected thing maybe for the average law student of Duke in the 1934 to 1937 period. Would that have been the case? What would have prepared someone legally for, not a career, but for assignment and obligations as a lawyer with the OPA? And correct me if I'm wrong. That would be the Office of Price Administration.

CAVERS: Yes.

ARENA: Which would have been an emergency agency of the Federal government during World War II.

CAVERS: Right. Well, I think we in law teaching like to feel that the curriculum of a good law school prepares its better graduates for meeting a range of unforeseen contingencies. You don't think of the instruction in law as simply a body of knowledge, an inventory of learning, out of which the student can draw relevant law rules as the occasion requires. Rather, we think of it as basically an experience in attacking intellectual problems of a variety of sorts which are not in the abstract, but which are tied down to the concrete by the fact that we study cases. We examine cases in relation to common law. We study cases in relation to the Constitution and the statutes, and a student who got through a school as demanding as Duke was confronted with a variety of teachers, a variety of approaches to law and in a variety of contexts. For example, in Constitutional Law, he had Douglas Maggs, who was most vigorous and able--an excellent Constitutional Law teacher. He was also a Torts teacher, a very effective first year teacher, as was Professor Fuller. Maggs came from California. He had been in Harvard Law School as a graduate student in my own third year. We gave them a rigorous exposure to a variety of legal problems, and they also got a very good education from their classmates who were very good people.

ARENA: Would you elaborate on that, please?

CAVERS: Well, the problem of teaching in a law school--pardon me, the problem of being a student in a law school, isn't one simply of learning rules. It's trying to wrestle with the sometimes deliberate obscurities of the professors and of the cases. Students can go a certain distance themselves, but they find that interchange with fellow students can be very helpful. And there were some very able fellow students in that class, one of them you will hear about more this afternoon. He was a collaborator with Professor Fuller, William Perdue. He was a country boy from Georgia and is now Senior Vice President and General Counsel of an international conglomerate.

ARENA: I may have mentioned to your wife that I do have an appointment to see him this coming week in New York City and the secretary said he is now Chairman of the Board of Inmont Corporation, so I may be giving you some information.

CAVERS: Yes, my recollection was that he was Senior Vice President, I didn't think of Chairman of the Board.

ARENA: I can give you his address, which you probably have, and telephone number. He was a roommate of the President, too, of course, and this is another reason why I am particularly anxious to meet with him.

CAVERS: Yes. He was a brilliant student.

ARENA: You say he came from a small town in Georgia. You don't recall the name of the town? But from a non-vigorous industrial state of the country. Now, he is certainly a vigorous industrial leader.

CAVERS: It used to amuse me because the boys from that part of the country would take a word that law students often have to use, "approach," and they would make approach a word of three syllables, ap-pro-ach. But I think the students by virtue of their capability and diversity and small group spirit were very good instructors of one another.

ARENA: Professor Cavers, I try to give the impression that these interviews will be open to anyone who has the interest when they are deposited in the Presidential Library, and bearing in mind who some of these interested persons may be, I'm thinking of law educators themselves. Hence this question now. You were an undergraduate student at the Wharton School of Business, where by the way I had the pleasure of teaching part-time myself as a member of the University of Pennsylvania History Department, and I taught the U.S. basic course under Dr. [Thomas C.] Cochran at that time. He was THE instructor. They have the semi-tutorial system where you take these students for small individual classes. But your major essentially was that of the Wharton School of Business; that of the President himself was history at Whittier College; that of Mr. [Harland F.] Leathers was English. Would you want to comment on one, that point in itself, the variety of majors of pre-law students, since you have had them yourself with varied backgrounds; and maybe you would want to make a special comment about the fact that the President's particular major was history.

CAVERS: One of the problems that used to come up frequently in law teaching circles was whether we ought to prescribe a pre-law course, and various colleges have a special constellation of courses for pre-law students. When I took my degree at Wharton, I was a pre-law student. One of its attractions were the fact that it gave me a large number of electives which I could take in college. But in this period of discussion whether we should have an official recommendation of pre-law courses or whether the

Bar should prescribe certain subjects for pre-law education, the great bulk of the law teachers in the past, and I believe it is the same today, concluded that it would not be wise to recommend a pre-law course; that the law has a great many aspects, and we find that having student bodies with varied backgrounds is stimulating, not only to the faculty but also to each other, and that their undergraduate interests can often lead them into certain directions, either in their practice or in their work in the law school.

ARENA: Professor Cavers, thank you very much for the pleasure and privilege of this interview.