Acadia Institute Project on Bioethics In American Society

November 20, 1998. Interview with Baruch Brody, PhD. Director, Center for Medical Ethics and Health Policy, Baylor College of Medicine, Houston, Texas. The interview is being conducted by Judith Swazey at the Westin Galleria Hotel Houston.

Swazey: Let’s start with a little bit about your family background.

Brody: Ok. My father was an immigrant who came to the United States from Lithuania, came here in the 20s. He was a Rabbi and spent a while teaching as a clergyman but then when he married my mother, he went into business with her parents. My mother was an immigrant from Canada, although her family had originally come from Poland. They met in the late 30s, got married after an intense courtship, of which I actually happen to have the letters they wrote to each other. They saved them, and when they died, I found these letters. In the opening letter, my mother said they were going to save these letters so that their children and grandchildren could read them, so I felt I could.

Swazey: That’s wonderful. What a treasure.

Brody: Yes, it’s a wonderful thing. They got married, my father went into business with them, we lived in Brooklyn, they brought me up in Brooklyn, they were very devoutly Jewish, sent me to a parochial school, which was actually one my father and grandfather founded, and I lived in Brooklyn and went to parochial school and then continued that even through my college years when I was a seminarian during the day
and went to college at night. I don’t know what else I can tell you about my background. They continued to live in Brooklyn until they died in the 80s, but I moved out in '62 when I went to graduate school.

Swazey: How much has that upbringing influenced your subsequent career?

Brody: I think a lot. I haven’t written all that much on Judaic medical ethics; I’ve written a few pieces. Actually, I plan in the forthcoming years to write a lot more on those matters. But those who’ve actually read my secular writings, knowing about the background, can see it creeping in here, there, and elsewhere. I think probably the way in which it most does is anybody who’s read my Life and Death Decision Making and looks at the casuistries is quick to know that it looks like Talmudic discussion and that’s exactly right. I plan to actually write a lot more of that in the forthcoming years. So I think it had a big influence on my professional work in that way. It also had a tremendous influence on my life more generally. For 20-some-odd years, I actually chaired and often just ran a local parochial school in Houston and people got to Houston knowing that if they needed an ethics consultation, they’d have to call the school and find me there. So it certainly impacted my life in that way. But, as I said, I’ve only written a little that’s explicitly about that and I expect in the next decade to write a lot more. My plan is to write at least one essay a year in which I reflect upon the influence of my background on these issues.
Swazey: Did you ever consider becoming a Rabbi?

Brody: No, I think our family tradition was you did all the study but never actually became one. Which was, after all, a tradition back to Maimonides, who thought it was wrong to use your knowledge to make a living in that way, that’s why he was a physician. No. I think my father, actually, would have been upset if I had because it was not in keeping with our family tradition.

Swazey: When you went to undergraduate college, did you see yourself going into philosophy?

Brody: Actually, no. I started college when I was 15 so it was hard to know what I saw myself then. I saw myself primarily as pursuing young ladies, I think, but when you’re 15 that’s what you do.

Swazey: Very bright, but otherwise fairly normal.

Brody: But around my sophomore year, I decided I wanted to be a college professor. I had a totally mistaken view that it was a life of leisure and so forth. And then it was only a question of what field to profess, right? Then I took the philosophy course, with a wonderful teacher, and said this is what I really should do. At the end of my
sophomore year, that was my first course, so my junior year, I took nine courses. I essentially devoted my entire junior year to doing philosophy and I've not looked back since then. So it's one of those cases where a single course really... I knew I was going to be a professor but I was actually thinking of doing comparative literature. But then I did this philosophy course and it was a good thing. I would not have done well in comparative literature.

Swazey: So you went to Princeton to get your PhD, you really saw that professor of philosophy as your...

Brody: Yes, that was what I was going to do. I actually did my degree in the history and philosophy of science, wrote a thesis on the early history of Boolean algebra, which I was then the world’s leading expert on only because there was no competition. Many of the books I had to read in the Princeton library, you could tell they had not been checked out in 100 years. It was sort of delightful.

Swazey: Makes you feel like an explorer.

Brody: In a certain sense. I don't remember a word now about what that was about. Then I went to MIT to teach, thinking I would teach the history of the philosophy of science and discovered, much to my amazement, the students were not interested in the early
history of Boolean algebra. In fact, they didn’t want to talk about the history and
philosophy of science at all. It was ‘67 and they wanted to talk about war and civil
rights and civil disobedience, and the dean said, “you’d better talk about something
they want to talk about.” So that’s how I got into ethics. That was not part of my
intention. My intention was to do much more traditional, philosophical stuff in
philosophy of science, and maybe in metaphysics and the relationship of the two. So
there were two fortuitous things. One, in my taking this course and deciding to do
philosophy; and two, going to MIT and finding the students didn’t want to do what I
had been trained to teach.

Swazey: So it really was the whole war era and the civil rights era that...

Brody: In fact, the way medical ethics got in only was Judy Thompson and Gerry Dworkin
and I decided we’d give a course and we decided to call it Contemporary Moral Issues
and what we would do was the war and the issues of just war and the issue of race
relations and civil disobedience. I don’t remember which one of us said, I know it
wasn’t me, we ought to do one issue in personal ethics. Actually, I may have said that,
and Gerry, I think, said, “let’s do abortion.” Judy, to some degree, and I to a great
degree, opposed it, mostly thinking there was nothing of interest to say about the
topic. She then wound up writing extensively on it. So that too is fortuitous. That,
literally, is how I got into bioethics, only I didn’t know I was getting into it because
Swazey: So what was the topic you picked?

Brody: We picked abortion. Like I said, I was much opposed to it and that was my first introduction to thinking about anything having to do with medicine and health care.

Swazey: You subsequently went on to write quite a bit about abortion.

Brody: Yes, in fact I’ll tell you an interesting story about the book, which precipitated my moving to Texas. It was really just all these happenstances that led us to cover abortion, which then got me into that topic and that was the first topic I wrote about in bioethics. None of that was planned. I often tell my graduate students, don’t try to plan your career. Going into philosophy, none of that stuff was planned.

Swazey: It seems to be true for an awful lot of people. You can look back and say this was a serendipitous event. Were there people you considered particularly significant influences on your work? I try to shy away from “mentor” because it’s so over used.

Brody: No. I don’t think I did. I think I might have done one ethics course in graduate school. The stuff I began to do really was not stuff that I had, in any way, really been trained
to do. Joel Feinberg once claimed to me he was really excited because all his students
went on to write stuff about abortion, which he collected in his anthology, and I
couldn’t bring myself to remind Joel that I didn’t take his course, but I figured he was
happy and why should I feel compelled to correct that. So really not.

Swazey: Was the philosophy that you studied at Princeton fairly analytic?

Brody: Yes. And that remains true today. Just yesterday, one of my graduate students was
saying, “I didn’t go into bioethics to do analytic philosophy.” And I said, “if that’s the
case, you came to the wrong place.” Princeton was a very analytic department. The
people I had as undergraduate teachers were all analytic philosophers, very rigorously
so, very ideologically so. It fit my temperament, fit in very much with the Rabbinic
way of thinking, with all the sharp distinctions. When I came to analytic philosophy, it
just sounded like what I was doing in Yeshiva. It was very natural. There were people
at Princeton, not in ethics, like Peter Hempel, who was a great role model for me, in
two ways. Beside being a very good philosopher, he was keenly excited when his
students found things wrong with his stuff. Unlike many others, I encourage my
students to not extend my theories one step further, and I got that from Peter. And the
other thing is, he is a man of tremendous integrity. And I’ve tried to be that way. Not
always as successfully as Peter was. So he, probably more than anybody else, had a
really great impact on me, certainly in the way of my relationship with my students,
Project on Bioethics in American Society
Baruch Brody, PhD
page 8

which is to not try to create a school instead of followers.

Swazey: So really very little study of ethics.

Brody: Not at all. The only one doing normative stuff at that time was Joel and I didn’t take a course with him.

Swazey: What was the abortion anecdote about you getting to Houston?

Brody: I then wrote a bunch of stuff on abortion and came up for tenure. I completed a book that was accepted for publication by MIT Press and then it didn’t come out. It was getting closer and closer to tenure time and after much diligence, I found out that the Press staff had decided they would not work on the book because they didn’t like its conclusions. Charles Fried agreed to be my attorney. Yale University Press said that they would publish the book if MIT backed off. Charles wrote a letter to MIT Press saying we’re going to sue and MIT didn’t back off and actually published the book and made a great deal of money out of it. It was a great success commercially. But I then decided two things: one, I wanted to get out of Boston because I didn’t like this sort of political correctness, which was amazing because on most issues I was really in agreement with these people; and also, I wanted to get out of bioethics. I didn’t know I was getting out of it. I wanted to get out of applied ethics because it was a nasty sort
of business, right?

I looked for a job and found the job at Rice and proceeded for half a dozen years to write nothing in the area of bioethics and finished some work I had done on essentialism in metaphysics and its relationship to the philosophy of science and published a book on that. At least people weren't threatening not to work on your book in that field. It was really quite traumatic; I was coming up for tenure, the book needed to come out. In one sense, it was pretty exciting because Yale said they'd have a press conference and say this is the book MIT refused to publish. But on the other hand, this was not me. So for a whole batch of years I wanted nothing more to do with the field. I really didn't even keep track of what was going on because I was going to do metaphysics and philosophy of science and go back to my roots and I was going to be out of the Northeast; I was going to be in Texas where people were too polite to do that anyway. It was really quite a bizarre episode. Paul Ramsey, who was actually one of the people who reviewed the book for MIT Press, was sufficiently angry. He wrote an op-ed piece for the New York Times, and usually Paul's stuff the New York Times would take, and they didn't take this one. That made Paul and me even angrier.

Swazey: That's fascinating.

Brody: I don't know how well you knew Paul, but...
Swazey: Not as well as I wish I had.

Brody: An interesting sort of man. He was actually a great person to talk to after he'd had a lot to drink. That was some of the best times to talk to Paul because he would sort of let go of many of his inhibitions. We had a long talk one evening, about my book. He apparently had called people at the Times. He was in his really gregarious mood as he was describing the whole episode, and I was thinking, "I don't need this, this is not a way to live."

Swazey: What got you back, then, into bioethics?

Brody: What happened was that Baylor was doing a search for somebody to direct the Center it wanted to create. They were doing it in connection with the Institute of Religion which exists at the Texas Medical Center. I was advising them about people who were coming by. Here I'm not entirely clear because I wasn't privy to this... Either the president of Baylor, or the people doing the search, suddenly came up with the idea that "why get this guy's advice, why not ask him to do it?"

Swazey: No good deed goes unpunished, Baruch.

Brody: Yea, I know. And I was actually foot loose to do something else. I was about to turn
40. Since I graduated early, I was entitled to an early mid-life crisis. But I was quite aware of what was going on. I actually thought I would do academic administration. I’d been offered various deanships and provostships and what not. My great difficulty with that was I hate meetings and I don’t suffer fools easily. Those are not good qualities for deans and provosts and so I was thinking maybe this would not be such a good idea. And then they came along with this idea and it was different. I wasn’t quite sure what they had in mind, and the truth of the matter was, they weren’t sure what they had in mind.

Swazey: What stimulated Baylor’s decision to start the Center?

Brody: They had a little bit of stuff the Institute of Religion was supplying them. But Bill Butler was then the president and really quite a prescient man. He saw what some other schools were doing and he thought medicine was entering into a time when it would be meeting many new challenges, and all the usual sort of stuff. But he actually believed it. He didn’t quite know what he wanted but he did want people to teach the students and residents what these new issues were. And he thought maybe I could also be of some help to some doctors, but he didn’t have in mind, really, much about the consultative stuff and neither did I at that time. It was mostly to be teaching. I remember him saying to me very categorically, “we’ll measure the success of the effort in 20 years, because only then will we see if we produced a different type of doctor.”
We both had in mind teaching and then I would go back to doing some scholarship in
the field. He made a remark to me one day, “you know in the medical school, we
mostly teach at the bedside so you should try to do that as well.” He added,
“Although, I have no idea how to do that.” And I certainly had no idea how to do that
because I had never heard of teaching at the bedside before he made that remark, but I
wasn’t about to disagree with someone who was about to hire me. I said, “yeah Bill,
teaching at the bedside, that’s obviously what we want to be doing.” Then I went
home and said to my wife, “how in hell do you teach at the bedside?” But what he did
do very well was identify a half a dozen senior clinicians who he thought had an
interest in the topic and he said, “why don’t you go visit with them? And then you
guys figure it out.” And that actually was probably one of the biggest things; we both
thought it would be an interesting thing to do although we weren’t quite sure what it
was that we were doing. And it was a challenge and it was mid-life so it was time to
do something different. The biggest thing he did for me was introduce me to
sympathetic, reasonably senior people. So if they said it was going to happen in their
units, it was going to happen. That’s how I got into it, and then I didn’t know what
was happening in the literature because I had dropped out of the field. When I think
back in retrospect, it was all sudden...

Swazey: Sudden immersion.
Brody: It was stupid, actually. I was asked to give grand rounds the first week on the new DNR orders and I didn't know what a DNR order was!

Swazey: This was your first exposure to the world of medicine?

Brody: So there I was, thrown into it. The colleagues I developed in the very beginning, and they remained colleagues for many years, were really good. I told them I would say stupid things about cases because I didn't understand the medicine and they said they probably would say stupid things about the cases because they didn't understand the ethics and we'd help each other.

Swazey: It worked.

Brody: It worked, actually. I've been very, very fortunate. It was the clinical colleagues who really made the whole thing work. And Bill's steering me in the direction of a few of them at the very beginning was tremendously valuable. What he did was, as I think back, he sent me to crucial people who would then tell me who were the people. Like he sent me to a guy who runs the house officer education in pediatrics, and he said I should go visit with the head of pediatric hemonc, I should go visit with the director of the neonatal ICU. They've got the problems and those people have a sense of these issues and would like to do things about these issues. And that began.
Swazey: And here you are. Let me switch into asking you about the nature of bioethics, which is a question we've been asking everybody, and most people groan as you are.

Brody: I don't have any wisdom about that.

Swazey: How do you think about bioethics? How would you characterize it?

Brody: I had a deposition last week in which I was asked to do that in one sentence. In a deposition you have to do that, otherwise you're said to be a nonresponsive witness, right? So I said it has to do with the application of ethical ideas to problems in medicine and biomedical research. That will do for a one-liner but, you know...

Swazey: Application of what ideas?

Brody: Well, that's a good question.

Swazey: Philosophical?

Brody: Yes, a lot of them really are. I actually think there's no doubt about what is going on when I do bioethics. It's sort of all this analytic philosophy stuff, including methods,
because the way I do cases is a casuistry approach; some of it comes from the law, especially Jewish law and a lot of it comes just from bioethics. So the methodology is very philosophical. But even the ideas that get applied... I talk to my students a lot, and to the residents, about Elstev's work on adaptive preference formation and the philosophical issues of what's an autonomous preference as we talk about patients who are expressing preference and we wonder whether they really represent to the patients' preferences. We talk about the philosophical concept of pre-commitment when we talk about advance directives. Some of those very straightforward, clinical types of stuff. We have about a dozen graduate students doing philosophical bioethics and that's what we teach them. There's all this stuff about which preferences should count and so there's all this philosophical literature about preferences, which is what plays out in discussions of autonomy and discussion of advance directives and other sorts of matters. That's only one of many examples. The truth of the matter is, in teaching bioethics, I draw very heavily on the general philosophical literature and not just in ethics, but in philosophy of science and other areas. So, both in methods and in content, the bioethics stuff I do and teach is very heavily drawn from the philosophical literature. That's what we say to people who apply to our graduate program. We will teach you philosophy first, and then we will teach you how to apply those ideas to problems that arise in medicine and biomedical research.

Swazey: Do you see bioethics now as a field or is it a discipline?
Brody: I see it as a field more than as a discipline. I see it as a set of issues that a group of professionals are devoting themselves to. Of course, not a closed set of issues; it grows over time. The reason I say it’s not a discipline is because it seems to me the professionals who do it come from a number of disciplines, and they bring those disciplines to their work. To some degree, if you do it coming from one discipline, you have to learn something about these other disciplines, like theology, the law, economics, and so forth. That’s why I don’t want to say that bioethics is a discipline because it seems to me there are a number of disciplines that are contributing to a field. This all came up when Ron Carson went to put together his PhD program and I was asked to evaluate it. That’s really a PhD program in a field rather than a discipline, and in the report that we wrote to whatever Board it is in Texas that needs to approve it, we said, yes, it’s a great idea and it will fill a real need, but it will not be a discipline. What they will be doing is teaching students some about the different disciplines. It’s not the way I would go if I were recommending to a person who wanted to go into the field. I would say learn a discipline. But it seems to be a legitimate alternative. It was a funny sort of report to write. What we were saying to them was, “we think this is a valuable idea, done by a good group of people, and we think we should move it forward,” although I and whoever else it was on the committee, none of us would go into the field that way. But that’s ok. So I would say yes, there’s a field but not want to claim there’s a single discipline.
Swazey: To what extent has bioethics gotten to be interdisciplinary versus multi-disciplinary?

Brody: Can you help me?

Swazey: Well, I see multi-disciplinary as people from different disciplines working on a topic but often out of their own boxes. Interdisciplinary really partly merges...

Brody: I think more interdisciplinary in the following sense. First of all there's a lot of conversation between the people and I think everybody in the field thinks that's really good. Now, which disciplines do people think should come to the discussion, people may differ about. Some people have real differences about to what extent literary analysis is important, that's the debate about narrative, right? And also how big an institutional impact on the question of the societies' merger. That was a big issue. Will the philosophers really appreciate the literaries? I think everybody agrees there are a bunch of disciplines that have something to say. People may disagree about specifically which ones. So people sort of welcome the contribution from others. And the secondary sense, people who train in one discipline try, actually, to learn about the other disciplines so that they don't have to depend upon people from the other disciplines.
Swazey: Which disciplines do you see at the table?

Brody: Certainly philosophy. Certainly theology. Certainly law. Certainly economics. Certainly medicine, but that's a complex story. I think literary analysis to the extent that it helps us better understand how to think about individual cases; it helps us understand stories better. And increasingly, cultural anthropology. History, although I think less than most people. That may just reflect me. It's not that I don't think it shouldn't be there but I can not think in those historical ways. Even when I teach the history of philosophy, I tend to think the authors are all contemporaries. Some years ago we had a shortage in the department so I did the advanced undergraduate course on ancient philosophy. I announced to the students the first day that I would not teach them any history of philosophy, but I would teach them Plato and Aristotle. My main thesis was when they disagreed, Aristotle was almost always right. That was my view. It could have been Joe and Frank down the hall and when they disagree, Frank's right. I am, in a lot of ways, ahistorical.

Swazey: Is that out of your training?

Brody: Maybe more than training in analytic philosophy. I'm actually extremely interested in Jewish history and I have an extensive library which my wife just built me. It's a magnificent library in the house. When the kids moved out, she's a designer, she did
this beautiful thing. She brought many years worth of favorites to be returned. So I
have a great deal of interest in history but I don’t do my own research historically. I
have a lot of avocation in history but not...

Swazey: You can apply it...

Brody: Yea, but on the other hand it’s not something that I do primarily in my work. Tris and
Larry are much more historical.

Swazey: Do you consider yourself a bioethicist?

Brody: Yes, very much so, in really concrete ways. I go to the bioethics meetings every year. I
go to many of them. I haven’t been to an American Philosophical Association meeting
in 8 or 9 years. Some of it has to do with when they schedule it. But about a decade
ago, I stopped going, except occasionally, which worked out well. And if I was
essentially doing philosophy, I’d be at every meeting, whereas I go to several bioethics
meetings a year. When people ask me what I do, I say I’m a bioethicist. I still take a
couple major philosophy journals. So in all the ways professionals define themselves
socially, it’s clearly much more bioethics.

Swazey: Was that an evolution in your own self-definition?
Brody: Yes. I’m not sure it even happened consciously. It was certainly an evolution and it just happened. Actually, to some degree, there’s some regret. As much as I enjoy what I’m doing, I’m actually making a conscious effort, now that I got my last book done, I have some time to do a couple projects, small things that will take the whole year, so I’m giving myself some time to think through where I’m going. I will continue to do a lot of bioethics but I want to write at least one essay a year on Judaic studies. I want to write at least one essay a year in straight philosophy. I’ve actually submitted the first paper in maybe 15 years to a straight philosophy journal and they take 6 months to review it. I’m not used to that. Having noticed this evolution, not being unhappy about it, but not wanting to be as completely a bioethicist, I’m actually making a conscious plan in this next decade to partially reverse course. So it was really about the question of when Jews, Christians, and Muslims pray, do they address same God. They use different names and do the names refer to the same entity when you look at the theory of reference. Anyway, I gave it at a conference in London and people seemed to like it so I sent it off to the Journal of Philosophy. I really enjoyed doing it and some colleagues of mine, who do straight philosophy, said “this is really good stuff and you should go back to doing that.” And I said, “yea.” So I have this conscious plan.

Swazey: Are there downsides to being defined or defining yourself as a bioethicist in an
Project on Bioethics in American Society
Baruch Brody, PhD
page 21

academic environment?

Brody: At the moment it sort of has many upsides. The downside probably is it has too many upsides. That probably needs an explanation.

Swazey: It would help.

Brody: There are very large number of people at the moment who think they need a bioethicist to help them with one thing or another. For a variety of reasons, they often turn to me, so I find myself being distracted, in many ways that are sufficiently attractive that I usually wind up saying yes. So that’s a bit of a downside. I’ve got a whole bunch of graduate students who want to be trained, a large number of clinicians who want to be mentored. A bunch of these people I work with all got tenure working with me and so now there’s this view out there in our medical center that “work with Baruch and you’ll publish stuff in good places and you’ll get tenure because the college respects it.” It’s interesting to see these bright young minds show up and say, “we want you to teach us how to do this stuff.” It’s really hard to turn them down. I have a very large consultative practice. I can do two cases a week. That’s a lot for a bioethicist. I could do really more if it weren’t for the fact that we organize it so I’m not the only one who is doing it. It’s real hard. Even when other people are on call, people who used to work with me will call me and say, “I need your help.” I’ll say, “I’m not on call.” And
they say, “I need your help.” It’s not that the other help will be different, it’s that they’re not used to it. These tend to be sensitive issues and they want to work with somebody they are really comfortable with. It’s hard to say no when you have relationship with people. I treasure these relationships. The bottom line is that I find it hard to always control my time and do what it is I most want to do. I think if I were just a straight philosopher, I’d get a lot less calls. So that’s a downside. But on the other hand, a lot of these are really attractive and interesting calls.

Swazey: Do philosophers, especially if they are trained in analytic philosophy, tend to have a different perception of a philosopher who does bioethics?

Brody: It may matter in some ways, but if it does, people probably wouldn’t say it directly to my face anyway.

Swazey: You have achieved pretty senior status. But say a younger person.

Brody: A younger person might have a little more trouble. But that’s another factor. I wrote a big book on essentialism and modal logic and the interpretation thereof, so I earned my credentials.

Swazey: So you were a philosopher...
Brody: I did a bunch of stuff that people who can’t imagine what the hell I’m doing now perfectly well recognize and to some degree respect... It buys you a lot of credibility. I have a young, very, very good student who is finishing a PhD with me now, a really outstanding young woman; in fact, we’ve just hired her. I’ve always been opposed to that but she’s so good, and one of the hospitals wanted a whole bunch more work and gave us a big batch of dollars each year to do the work for them so we could hire a person or else do the work ourselves. So I hired her and she wants to make a career in philosophy and also do bioethics but not exclusively. Part of the arrangement is she’s got 25% of her time off to write on non-bioethical issues. In part because she wants to do that and in part also because I said to her, “if you want to be able to be a candidate for a job in a really strong analytic department down the road, you’ve got to have some of that stuff.” So she wants to do it anyway and she has to do it. I reminded her about the stuff I’d written about essentialism and Aristotelian explanation. It’s been easier for me but then I also think for many of the other people... Dan Brock is in the same position, I mean he’d written enough straight philosophy. Allen Buchanan. So some of the philosophers who have received prominence in the field have done enough outside of bioethics so that no one can challenge our credentials. That’s a pretty frank sort of remark but I think it’s a reality. Now, of course at Rice it’s very different because we’ve got these national rankings that are so high as a philosophy department because essentially of the bioethics work and the ethics work related to it. All our
graduates have come for that reason. Institutionally, that's not been a problem. But I know it isn't a profession and I tell it to my students. And it's been less of a problem for me. I was on the National Board of the APA for awhile so those credentials have helped.

Swazey: I take it from what you've said about coming out of training in a discipline that you feel someone should become a philosopher, theologian, or a lawyer and then learn bioethics, not get a degree in bioethics per se.

Brody: That's right. That's how we run our graduate program. For years we did not give a graduate course in bioethics. We were taking a real hard line. You learn it only after you've done your comps. We've broken down. You can't be one of the top graduate programs in the field in the country and not offer any courses. That seemed a bit extreme. So we now offer a course a semester and that's pushing it a little bit in what we count. So that's what we do and that's what we think and actually it's really the ideology of our graduate program. When people inquire, we tell them that different programs differ in this respect and we think the best way to do it is to learn a discipline first then apply that to this field. If you want to do philosophy, that's what you've got to do. Not only do I believe that, but that's how Tris, Larry, and I and our colleagues at Rice structure our graduate program. Lot's of people call after they get that spiel and say, "I'm going to go elsewhere." And we say, "that's a good idea."
Swazey: So you don’t even have a concentration in bioethics.

Brody: Eventually you can do that but the way it works is you’ve got to do all your regular philosophy courses first. You have to take your comps, usually in modern ethical theory, you do a little bit of course work, but not much. Only afterwards do you begin to start doing bioethics. So you do eventually but your basic training as a graduate student is in straight philosophy. You study stuff like Rawls and study Hempel and Quine and then see how all that helps you understand bioethics.

Swazey: What’s your view of the increasing number of masters in bioethics?

Brody: I have no problem with that because I think a lot of people who get a masters are people who have some ethics work related to clinical stuff, some physicians, many nurses and social workers. They want to get a lot more extensive knowledge so they can do their work better and be better members of ethics committees and so forth, and help the hospitals some times when they’re having problems. And I actually welcome that. These people are more consumers of the literature than they are likely to become contributors to the literature. But they’re going to be real informed consumers of the literature. And I actually think that is a very good thing. When such people call me, I don’t tell them that’s a mistake. I tell them “we’re not the right place for you.” But I
tell them about a bunch of other programs. There’s a woman downstairs who’s an astronaut and I do a lot of work with NASA. I head the bioethics policy task force and I’ve done a lot of work with her. She’s become increasingly interested and she asked me, “what’s the difference between the PRM&R meeting and this meeting, both of which look like interesting meetings?” I said, “well, one is research oriented and the other more general.” But more importantly, most of the people who go to the PRM&R meetings are not contributors to the literature. But they are among the most informed of the users of the literature and use that information in very valuable and practical ways. I think people who are getting those MAs are one level higher even. So I actually welcome those programs and encourage those clinicians who call me even if I say “we’re not the right place for you to be thinking about doing just that sort of thing.” How much harm can it do? Obviously it could do a lot of good if some of the people who are playing significant roles in their institutions really better understood the issues and didn’t just memorize four principles of bioethics and look at two regs and think they were ready to be a bioethicist.

Swazey: You said you testified as an expert witness a couple days ago. You know there’s been a lot of debate about bioethicists as expert witnesses.

Brody: I’ll tell you what I tell the lawyers when they call me. First, I have two rules. One is I only testify when I feel strongly their side is right. I have what I call the “stink rule.” I
have to smell a bad odor on the other side to want to testify. And the other is that the primary focus of my testimony will not be what my opinion is. The only thing I will do in those cases is to testify about what the standards are that have been developed in the literature, especially in the literature of the medical professions, as to how physicians are supposed to deal with that sort of case. So, in those cases I put myself forward as an expert on the literature of the professional standards. I will also try to explain why the professional standards say what they do, often joining what's already there to the background literature.

END OF TAPE 1, SIDE 1

Swazey: That type of testimony is very different, it seems to me, than testifying as a bioethicist about ethical positions. You’re talking about professional medical standards.

Brody: Yes, although the issues may be issues in which there is whole body of literature. If I think the standards are wrong, I won't testify at all in that case, because, remember, it has to meet the stink factor. What I will testify about is why there are all these standards in the profession. Why I think they are right but also that these are the standards. In one particular case, without going into a lot of the detail, this was a physician who is now being sued by a former patient with whom he had had a sexual relationship. And there was no disagreement about that fact although there was
disagreement about when it began. His defense was that it began after the physician-patient relationship ended. I said I would give no testimony as to who was right about when it began. There were a whole bunch of other experts who thought they could tell by reading the depositions who was telling the truth about the factual claim. I don’t understand how they thought they could do that. Maybe they can but I can’t do that. What I did say was I’d be happy to testify on the question of what were the professional standards about sexual relations with former patients and what I essentially said was let us assume that what he is saying is true. Did his behavior meet those standards? My testimony was that it didn’t and I explained why there was the standard about relationships with former patients. As you might guess, lawyers love that so what I wind up doing is getting very large numbers of phone calls, but given the “stink rule,” only a small percentage of those do I actually take on. So that’s how that works. What is had led to actually is a scholarly project which I’m completing. A colleague and I have actually collected, from 26 major medical organizations, all their statements, some of which are published and some which are not, on all ethical and health policy issues. We have collected them. We are writing 20 introductory essays to orient readers to them. BNA, who is publishing it, will do this massive indexing of it.

Swazey: That will be very nice.

Brody: Scholars will like it, but actually the big market, since it’s BNA, as you might imagine,
they anticipate that every hospital counsel will have one and every health law firm will have to have one. No doubt that's true.

Swazey: Loose leaf binders so it can be edited?

Brody: The plan is to have annual updates and so forth. Actually, and here I disagree with my good friend Bob Veatch, when you read the literature, these statements, some of it is clearly self-serving, but much of it is remarkably thoughtful and insightful and I think it is a good literature. It's quite interesting, in talking to these various groups, some have much more than others, and many of them want to know, "how do we look?" And in a few of them, because of the various relationships I have with them, I tell them, "you don't look very good, actually. Your stuff looks very self serving and not very thoughtful." Particularly one case because I know they've begun a project. What happened was I did grand rounds to that department at Baylor and I told them about how bad their professional statements were. The chairman, who was a big player in the Association, called up and said, "I don't want to hear this ever again." He wasn't angry at me but he said, "I'm very unhappy that our profession has taken such silly stances on a whole bunch of issues and produced such self-serving literature that's of no contribution." He actually sort of pushed through a resolution that they should develop policies, and one of the first things they're doing is reviewing all the other literature from the other groups. I think that's a good thing.
Swazey: Absolutely. Should bioethicists be certified to do, I will now shrug because I’m not sure what?

Brody: I’m of mixed mind and I’ll tell you why. The part that says against it is because I’m afraid that what we’ll rapidly produce is... you’ve got to know a little of this and you’ve got to know a little of that and... people haven’t been trained in any discipline, just a little bit of everything. I don’t like that. So I’m afraid what will come about, because of this difference between a field and a discipline, that’s my biggest argument against it. I know where it’s coming from. A lot is from health care institutions who, either out of their own recognition, or because the Joint Commission is pressing them, decide they have to do better in the area of ethics and think “well, let’s take on a bioethicist.” Actually what they’d like to do is take on somebody who can also earn some clinical revenue. But how do I know I’ve got one? Is everyone who calls themself a bioethicist actually one? I think that’s a legitimate concern that they have. It’s easier if you’re affiliated with an academic medical center because then you turn to the academic medical center, like the hospitals affiliated with Baylor, and say, “send us over your ethicist.” But what do you do if you’re not?

Swazey: Wasn’t there also, apart from the institutional pressures, a concern among people doing bioethics consultation that “frauds” were...
Brody: There was a little of that. That, actually, I was less sympathetic with. I think, partly, they were reflecting the institutional concern; but partly, I think, some people were self-serving.

Swazey: Let's protect our turf.

Brody: That's right. So, I don't care much for that. I think the report that finally came out was a not bad compromise in what is a messy situation. Because of my great commitment to the interdisciplinary nature of the field, I find it hard to see how we're going to do any substantive type of certification. On the other hand, I know where the institutions are coming from as they worry. I didn't much like some of the processes from some of the groups who were trying to push for certification.

Swazey: I must say, looking at that list of competencies in the bioethics consultation report, it reads like after 80 years of Renaissance study, you may be qualified to be a bioethicist.

Brody: Well, there are two ways of reading it. Either you give it a thick reading, and in that case nobody is competent. Or you give it a thin read.

Swazey: I gave it both and I like the thin much better.
Brody: At least put it this way, the thin is something that someone could attain.

Swazey: Well, I mean, if you take it seriously, you go, “this is absolutely impossible.”

Brody: If you give it a thick reading, it becomes... But you can see what was happening. So it was a not bad report in a world where a report was needed. What I say to institutions that sometimes call me is, “call somebody who is a recognized person in the field and ask him about this person whom you are considering and their credentials, whether they look plausible.” Of course the question is who is a recognized person. But I think that, in some sense, is easier to determine sociologically... whose stuff is published in the major journals and so forth. So I sometimes find myself evaluating people for health care institutions.

Swazey: I think that’s reasonable. It’s always worked that way in the academic field or discipline.

Brody: Yes. I mean there’s the problem with the old boys network and real concerns about that and you can take that as legitimate concerns, but I think that is probably a better route. But I know where the institutions are coming from. I don’t feel much sympathy for the first group, I do feel a lot of sympathy for people who legitimately are
recognized and they have this set of issues they have to deal with but it’s not part of their training and they don’t quite know... They don’t want to get misled. But they don’t quite know how they can tell who they are.

Swazey: Let me switch again, having too much to cover. One of the things we’re looking at particularly closely, is human experimentation. I’ve long been impressed by the fact that human experimentation has been probably the or a major leitmotif, antedating bioethics for a long time, and then running through bioethics and I see no signs that that is going to abate. Why would you say it has been, if you agree that it’s been, a predominant focus.

Brody: My reading on the history of this is a little bit different. I think it was extremely important earlier on. I think it’s recently become extremely important again. I think it was actually dwarfed in the 80s and the first half of the 90s with the clinical stuff and the health policy stuff. So that’s a somewhat different reading of the history.

Swazey: Actually, I’m glad to hear you say that because one thing we’re doing is trying to chart it in a somewhat qualitative way. I think it’s been there but I think there have been peaks and valleys and I think it did go down.

Brody: It was a valley time. Other things were peaking. Actually, I gave a presidential address
to the Society for Health and Human Values a couple of years ago which was just on
this question.

Swazey: Great, do you have that?

Brody: I never talk from a prepared script. The first time I taught, I wrote out all my lectures
for the whole semester. Around the middle of the third lecture, I looked up for the first
time and saw 80 blank faces in front of me. And I said, “you haven’t understood a
word I’ve said so far.” And they said, “no.” And that was a seminal moment. I could
either walk out and look for another career, or rip up all the notes I spent two months
writing. I said, “let’s start all over again.”

Swazey: Good for you.

Brody: I think the richness was in the 70s, and maybe again now, there is really a close
interaction between the research community and bioethicists, in a way that is very,
very valuable, so that people are actually called upon to do work that relates to real
problems that the researchers are struggling with. In the 80s, there was a peaking of
something else. The commissions wanted to interact with the bioethicists. So I think it
goes best when there is a lot of real interaction between the researchers and the
bioethicists. In the early years, I did all my work on the clinical side. I did life and
death decision-making. I drew upon all those cases that I had consultations for and to the extent that it's a rich book it is because there was this massive set of case experience I have which I was drawing on. But then I got invited to start working with the NIH and NASA on a whole bunch of research-related matters and that prompted me to look at what I took to be real issues about research. I think I was not alone, in that a whole bunch of others were working on real issues. And so I think really what makes the discussions rich is when it grows out of a close interaction with the people about whose behavior you're doing ethical analysis. Now, sometimes that's dangerous. You get co-opted. There's always that problem and I know certain people who have written on those issues so I should say nothing further about them in this interview. That is a real danger, and having to retain a certain distance at the same time, I'm not going to say anything more about that.

Swazey: Ok. At the same time, when you look at the history of the commissions and predecessor groups, human experimentation in one way or another has been a continual mandate.

Brody: If you think about it, it was on the agenda of the National Commission, but it wasn't essential to the President's Commission. Clinical stuff was clearly more central to the President's Commission and then the aborted Congressional thing certainly wasn't the research stuff, but on the new National Bioethics Advisory Commission, it is clear that
the research stuff is now back at center.

Swazey: It was different in the early mandate for the President’s Commission. How well are we doing implementing the federal regs was a task for the National Commission.

Brody: The most important President’s Commission reports were about defining death, about informed consent for medical care. That’s a bit of the evidence I would marshall for my claim of periods of greater emphasis and periods of lesser emphasis.

Swazey: Should the Belmont Report be rewritten now, which is one of the things NBAC is contemplating?

Brody: I don’t know. What are they going to put in its place? In so far as it goes, it’s not bad. It identifies some principles that large numbers of people seem happy to sign up with. It clearly helps structure the current federal regulations. I’m reasonably comfortable with the current federal regulations, although there are lots of details I want to play with.

Swazey: Would you give it any different or added emphasis?

Brody: There are a couple things you could add, like where is confidentiality and privacy. Is it
most derivative? Why should we treat it as being derivative? To the extent that that is becoming a big issue in epidemiological research and stored tissue research and so forth, why did it get subordinate status? You could add something like that. You could add, but that would be much, much harder, some discussion about why there are areas of consensus and why there are areas of disagreement in international regulatory stuff.

One of the big issues is, at least in some countries, people are putting forward a philosophy called deontological constraints as additional ethical principles, just some types of behavior you just can’t do. For example, if you look at the European attitude towards cloning, they’re not arguing about harm. They’re arguing that’s just an intrinsically wrong type of behavior. So they look at our bioethics commission’s report on cloning and say, “you guys don’t understand what the real issue was.” Many people think, myself included, that there’s room to add that in addition. But those are very contentious between different groups so if we decide we should add deontological constraints, which ones would we add? It means the Belmont Report is incomplete.

The one easy thing to supplement it would be to put a heavier emphasis on privacy and confidentiality. The other stuff you might want to add is going to be so contentious, I’m not sure it would get very far. Same thing about the view you shouldn’t do germ line research. LeRoy Walters analyzed it and said, “look at the traditional appeal. There’s no reason not to do germ line.” It’s eminently clear that those who are opponents are not in the slightest way moved by LeRoy’s argument.
Swazey: It’s sort of like the abortion debate.

Brody: The main thesis I came to is there are two areas that give us difficulties, although we otherwise get consensus. One is, who counts morally? The abortion and the animal issue. And are there any deontological constraints? And that’s cloning and the germ line research. So now you don’t need to come to my talk tomorrow because you know the whole speech.

That’s essentially where there are areas of incompleteness. And there’s a lot of detailed work that needs to be done. I’m glad the Bioethics Advisory Commission is doing some, though I don’t agree with some of the stuff they are doing at the moment. Eric has asked me to get involved in their international research thing. That grows out of my work with the AIDS trials so I’m hoping to try to have some impact on those discussions. So I think there are lots of areas, but I’m not sure redoing the Belmont Report is the way to go. There’s also major effort afoot now to redo the Declaration of Helsinki. Bob Levine is pushing that real hard. One thing he claims is that he’s convinced the group to get rid of the distinction between therapeutic and non-therapeutic research. How that’s going to impact on the standards of risk, I don’t know. When people realize how essential that is to so much of the stuff they’ve got...

Swazey: I have argued that with Bob for so many years, I’ve given up. He’s not going to change.
Brody: He’s not going to change, but he claims, but maybe that’s just his perception...

Swazey: I gather he’s written a draft of a revised Declaration.

Brody: He’s chairing the committee.

Swazey: But he’s written his own draft...

Brody: I know.

Swazey: ...and I’ve, shall we say politely, heard mixed reviews of it.

Brody: But he says, but that’s only his perception, that in fact he’s gotten buy-in on that among a number of other items. Whether that is actually true remains to be seen. Anyway, we’ll see.

Swazey: Have you seen a paradigm shift in our concerns, from back in the 60s and 70s of protecting rights and welfare, to a push for ensuring rights to participate in research?

Brody: Yes. You know that book that Jeremy Sugarman edited? I have an essay there where I
argue that there has been a major paradigm shift and it’s a good thing. Essentially the argument is that we move from protecting to a balancing between protecting and ensuring access. I think lots of people have made that paradigm shift. I think the new NBAC report on the cognitively impaired has not. For example, one of the things they have is recommendation two: you shouldn’t do any research on those who are cognitively impaired if you can do it with other people. So that, for example, those who are cognitively impaired and have other illnesses, for which there is no good therapy and there is very promising experimental therapy, ought to be excluded under recommendation two because you don’t need them for the research. But I can well see, as a surrogate for those people, saying, “hey I want them into those clinical trials.” It’s just like all the other examples. NBAC does not seem to have made the paradigm shift. Two seems to be coming directly out of the old view. It’s interesting because that is not what people are fussing about. They are fussing about the three-tier versus the two-tier debate, about the determination of competency. And two has just not been noticed. I was talking to Bernie Lo about it. Bernie’s on NBAC and he had not fully appreciated the significance of two.

Swazey: So you think they may look at it now?

Brody: I don’t know. Didn’t they have their meeting? I think Eric said he had just come from the Miami meetings.
Swazey: I guess they just did but they had to take account of the HHS comments.

Brody: And the other major issue is whether NIH or anyone else going to pay any attention to what NBAC has said? NIH strongly objected to many portions of the report. What will the coordinating council say about NBAC? I don’t know. “Thank you very much.”

Swazey: Pretty much what they did with our Research Integrity Commission Report.

Brody: Here’s the real difference. There, you at least had some researchers. I’m continually amazed by the composition of NBAC. Who on NBAC is a person who has actually done any significant either basic or clinical research? Now you don’t want to have only such people, but it would be nice to have some people. It’s rather unique, if you think about it for a moment. I’m quite amazed.

Swazey: All the discussions per Bob revising Helsinki, what about some of the cross-cultural differences in our standards for research with human subjects and does that embody a lot of the debate within bioethics about cultural relativism and universalism?

Brody: It does. I think, personally, both the general literature and the literature on international research is very confused. I think there are some differences. That’s what
my book The Ethics of Biomedical Research: An International Perspective is about and what my talk tomorrow is about. I think there are some differences and they play themselves out in the animal regulations which are so different between Europe and the United States, in the reproductive research issues, which again are so different from one country to another. And also this difference about the deontological constraints, which plays itself out in the views of different countries. But of course none of that relates to the examples that people are usually giving, like the Thai AIDS trial and so forth. I don’t think there are any differences of standards involved with it at all. I think it’s just a difference about the circumstances and also disputes about the facts. All the literature about the Thai trial, the most important article, from my point of view, is in the New England Journal by the guy from the Thai Red Cross. The usual defense is the stuff wasn’t available in Thailand and so it wasn’t an injustice to the women in the trials that they weren’t getting the 076 regimen, because they wouldn’t have gotten it anyway, so everybody’s been debating that thing back and forth. He just said, “hey, boys and girls, what you forgot about was earlier on in the time of the trial, the princess ran a campaign to raise money and we were making it available to everybody. We stopped our trial because it was unethical at that point.” The moral of that comes out of that story is what he is saying is the standards are just the same. He’s saying, “I started the same trial because if it wasn’t available to anyone anyway, it was an improvement for the people who got it and it was going to be of help to the country down the road, just our circumstances were different. And when our
circumstances stopped being different, I stopped my trial and you should have as well.” I think that’s exactly right. At the big conference in London on the 50th anniversary of clinical trials, I gave a talk on this and said, “I think he got it exactly right.” I talked about exploitation issues and I said, “so there are no difference in standards, there are just difference about factual circumstances in different societies.”

There are other areas where people disagree about the standards. But in this case I think we could have cross cultural agreement about the standards, about justice and exploitation, then maybe disagreements about facts, and also realize that different societies will be different. I think it’s very important to distinguish that from real differences in standards. In the ACTG case we had been supportive of those trials but then we got a protocol in front of us to do an interleukin 2 trial as an add on to triple drug therapy, the protease inhibiter. Mostly this was done in the United States and Canada, and they wanted to tag on some third world countries, which don’t have the triple regimen available, much less interleukin 2. And I said, just think of our standard analysis. The same analysis that was used to justify the Thai trial would make it wrong to run the interleukin 2 trial, and that’s what our board told the Director of the NIH; we should not run the interleukin 2 trial. It was not wrong to run the trial, but wrong to run the trial in these third world countries. The third world investigators, hearing that argument, actually agreed, although they had wanted to be part of the trial. I don’t really think on that specific type of example that everybody has talked about, there really are cultural differences. I think there are cultural differences and different ethical
standards on some of the stuff that I gave as examples before. One other example, which complicates all this, is this business about individual consent. But here it’s really complex. The claims are often advanced that different countries don’t have this view about individual consent. Japan is often given as a good example. I can tell you two things. One is the Japanese space agency had no trouble adopting a consent requirement for the space station. Secondly, the Japanese drug agency has adopted the international harmonization effort for good clinical practices guidelines and they sound just like our practices; in fact they are our regs and the Japanese have bought into them without any difficulty.

Swazey: I also remember when Japan was getting into bioethics, their sending people to the Kennedy Institute to take the Intensive Bioethics Course. They met with Charlie McCarthy and went home and said we will adopt consent requirements, but then they had to invent characters for it because the concept and language didn’t exist.

Brody: It’s true and it’s been a cultural change. But I would view that simply as being a way which, exposed to other ideas and having a chance to have some rational discussion about them, they’ve actually come along to accept it. So sometimes cultural difference may simply be a function of people not having been exposed to discussion and a rational dialogue. The other example I was going to give was I was at a conference a couple years ago in Japan and a Japanese psychiatrist, who played a major role in
insisting on informed consent in the treatment of patients, got up to give a talk to a very full audience. You don’t get standing ovations in Japan, but he got a standing ovation. So I think there’s a temporal lag issue, there’s a cultural diffusion issue, but I’m actually more convinced that in that area there’s a very large scale consensus, or there would be very large scale consensus once the ideas have a time to diffuse. I really think of those as being really universal principles and I’m very encouraged by the fact that, in all of these Japanese efforts, there was no major resistance. Now you can give a cynical interpretation the way Tris was doing this morning and no doubt there’s some truth to that but I think that’s much overdone in this example. Again, I want to distinguish consent from the other types of issues where I think there really are strong cultural differences.

Swazey: Let me turn to the relationships between religion, philosophy, and bioethics. How has it shifted over time, and why?

Brody: One thing that is clearly true is a lot of the early people in the field came to it from a theological background. Some of them did work that was very clearly within their own theological tradition and primarily that appealed to people in their own theological tradition. Some of them did work that, while maybe drawing on the resources of their tradition, were clearly meant to appeal outside. There was a real tension because when they did the second, it usually looked not all that different from what secular
philosophers were doing. When they did the first, it looked different but then it looked like it had only a limited interest. So that is a real challenge, and I think part of why religious thought and theology and theological ethics began to play a much less central role in the field is that that dilemma is hard to beat. I do a lot of teaching at the medical center of people doing clinical pastoral education. The challenge I always give them at the first session is, besides your counseling skills and your holding hands skills and saying prayers with people skills, are you going to bring anything to the ethical discussions that your secular colleagues can’t bring, that will be of any interest to anybody except for people who may be of your own very specific faith community? And they all see that as a very serious challenge. I think it is a serious challenge so I think that’s been a major difficulty and that, more than anything else, explains the decline... Allen Verhey and I had many discussions over this question. I kept saying, “Allen, what is specifically Christian about your bioethics, and yet at the same time would be of interest to anybody other than somebody who’s a reformed Protestant?” We talked a lot about it but I never thought I got a good answer to that question. I’m not sure he thought he’d really given a good answer to that question. My colleague Andrew Lustig and I had many conversations. He was going to do a book with one of his friends trying to just answer that question by reflecting upon it. He didn’t do the book, I think in part because it wasn’t clear what the answer was going to be. That has not stopped the production of a great deal of religious bioethics but a lot of it is, and probably the most interesting part of it is, really quite denominational. Then, when it
stops being that way, it’s not clear that there’s any special contribution being made.

I’m told that to say that a doctor has a covenantal relationship with a patient is to say something much deeper than to say he has a fiduciary relationship to the patient. That difference has never been explained to me in a way that... I’m using that as an example.

Swazey: Bill May hasn’t persuaded you.

Brody: No, and more importantly Paul Ramsey...

Swazey: Right.

Brody: So I think that’s a real challenge and I think many people in religious bioethics have understood that challenge and religious ethicists have not been clear on...

Swazey: Who would you say were some of the most influential, earlier religious bioethicists?

Brody: Early is really easy. Certainly...

Swazey: I’ll ask you about today, too.
Brody: Paul certainly had a tremendous impact. I think Joe Fletcher the first, while people are fond of not paying attention to his contribution these days, really had a lot of impact. Some people didn’t like all the things he said but it certainly provoked a lot of people to think about these issues. I think Dick McCormick did. And for Dick, that was an important challenge: how to do Catholic moral theology and yet get beyond it. It was clear that he was trying to get past that challenge. It’s hard to know what to say about Al Jonsen. I guess Al’s background comes from theology, but I wouldn’t, myself, have thought that a lot of his work was really theological. He may describe it differently.

Swazey: No, I don’t think he does. I think there’s always the issue that if you’re a priest, you’re always a priest whether you take your collar off or not. But I don’t think, if you read Al’s writings, you’ll say they are clearly coming out of Catholic moral theology.

Brody: I agree with you. Then there’s Stanley Hauerwas, but I don’t understand what Stanley is about so...

Swazey: I’m so relieved to hear you say that.

Brody: Country boy from Texas. I wish I could say that with the right accent.

Swazey: Were people like Joe Fletcher and Paul and Dick writing for people outside their faith
communities?

Brody: Oh, I think absolutely. And they thought of themselves as contributing to a public discussion and a public dialogue and they did. I think the federal regulations on children were greatly influenced by the debate that Ramsey and McCormick had about that question. I may be wrong about that, but others who were closer to that field then say they certainly had an impact. So they were thinking of writing as part of a public discourse. Dick always did his notes on moral theology every year, but on the other hand, he wrote a lot that was clearly addressed to a general audience. I think back about the Jewish bioethicists, I’m not sure, who did Jacobowitz think he was writing for? I think he probably thought he was writing more for his faith community than for people in general.

Swazey: I’m certainly not an expert on Jewish bioethics, but to the extent I’ve talked to people who are, their feeling is that it really has been directed toward the various Jewish faith communities, and not to a more general audience.

Brody: There are people who are unhappy about that, we chat with each other a lot; that’s one of the reasons I want to go back and write some stuff now. People have encouraged me to try to do some of that. I know some younger people, Noam Zohar and Laurie Zoloth-Dorfman, so there are some younger people who clearly think that
they are talking to the general public. Allan Weisbard says he thinks he’s writing as a Jewish bioethicist, but I don’t see that. I don’t see that there’s enough utilization of Jewish material. It seems to me, if you’re going to be writing as a Jewish bioethicist, you need to be using, substantially, the resources of that tradition, even if you’re planning to address a larger community and illuminate that larger community. I don’t see that Allan’s done that. If I were asked to identify a group of Christian bioethicists comparable to Zohar and Zoloth-Dorfman, there aren’t any names that immediately come to mind. I may not be following this literature closely enough. Tris tells me there are, in his journal Christian Bioethics, but a lot of them look like the old folks one more time, and a lot of the stuff doesn’t look to me to be sufficiently denominational. But I may be wrong. I wouldn’t want to fight that issue.

Swazey: A number of people have said to us that they think the most lasting influence in bioethics has been Catholic moral theology, not the Protestant traditions...

Brody: Well, but if you think about what is distinctively Catholic, I think it’s mostly been influential by rejection. Think of the most distinctly Catholic views. Certainly the views about reproduction and sexuality. Both of those have been influential mostly because we teach them to reject them. Abortion. I’m on the fringes of respectability on that topic and I’m more liberal than the Roman Catholics. I have become even more so in recent years but still... The stuff on suicide, but that’s sort of very common and I’m
not particularly sure that the Catholic stuff on that is what really is dominant. Joe Boyle, to my mind, is the best Catholic moral theologian writing about ethics today. He actually plays out implications of that stuff. It comes out to be so conservative. Joe’s point of view is if the patient refuses life support because the support itself is burdensome, that’s ok. But if they refuse life support because they find their life burdensome, and so they intend their death, that’s immoral. I think he’s got it exactly right about how the principle of double effect applies there. But then that’s not a particularly influential view so I think… I think more people have talked about it but they mostly have talked about it as a foil. It’s not that the Protestant stuff has been more influential, or for that matter, the Jewish stuff has been more influential, I think mostly the religious stuff hasn’t been very influential. I think it hasn’t been because of that type of dilemma that I was talking about.

Swazey: So you see it pretty much as staying at a low level...

Brody: No, I’m continuously optimistic that it will get better and I support the efforts, but I don’t see it at the moment… I shouldn’t say optimistic, I’m supportive of the efforts to try to do it better, but in a nonhistorical way, I’m guarded in my optimism.

Swazey: I suspect, and Tris touched on it in his lecture this morning, that the Catholic moral theologians get some credit now because of what I think is some confusion about what
casuistry is and who’s doing what kind of it and where it comes from.

Brody: Yes, Tris and I have many conversations about that because a significant number of people who are currently doing casuistry are Jewish and it’s eminantly clear where they get that from. That’s just their Talmudic training. One of the major shortcomings of Jonsen and Toulmin is that’s the only casuistry they knew about, so they don’t write about Islamic casuistry, they don’t write about Jewish casuistry, and they don’t write about common law casuistry, and they think it all has to do with the Catholic church. That’s just very bad history. I reviewed their book for the University of California Press. I told them it was a great book, but on the other hand, the authors should be encouraged to describe it as a history of one portion of casuistry. They wrote back in the comments, they don’t even disagree but since they don’t know anything about the other, they can’t say anything about it. I think it is a bad account of the history of casuistry and bad explanation of how casuistry creeps into contemporary bioethics.

Swazey: That certainly is a mode of medical reasoning.

Brody: Yes. There’s also that implication.

Swazey: They’ve been giving rounds in medicine for a long time.
Brody: Also, the common law stuff. Many of the people who come out of law into bioethics are just very comfortable doing casuistry.

Swazey: Do you think there is a particular affinity between analytic philosophy and law in this country?

Brody: Absolutely. In my courses, I teach a lot of Law Review articles. Law Review articles are full of references to the philosophy literature. I think that’s not trappings. I think that’s ongoing, regular discussions.

Swazey: But particularly for analytic philosophy.

Brody: Yes.

Swazey: Certainly not phenomenology.

Brody: No, although I should say that that stuff has had some impact on the Law Review literature. Deconstructing every area of the law. The Yale Law Journal is particularly prone, I’m embarrassed to say, so much so that I’ve almost decided to stop subscribing, I still get three law journals, and I’m constantly tempted when I see one more deconstructing article to stop the Yale Law Journal. So I think a whole bunch of
continental stuff has had a real impact on the Law Review literature. I think the academic lawyers are remarkably intellectually open, much to their credit.

Swazey: I must say, some of the people I know who partly do bioethics, like Alex Capron, who defines himself as a lawyer, are also the most amenable to thinking socially, and bringing social science into bioethics.

Brody: Social science has come in, economics comes in, the whole law and economics movement, philosophy, both analytic and otherwise. The good Law Reviews are remarkably interdisciplinary journals. So I do still take the Harvard and Yale Law Reviews and the Journal of Legal Studies, as a way of trying to keep up with some of that very rich literature, and use it in my teaching.

Swazey: When you were ticking off the disciplinary players at the table, you said cultural anthropology, you limited the social sciences to that.

Brody: I was thinking of them and economics. I’m sure others have their place. I should have said a little bit about psychology. I think of cultural anthropology primarily because of this interest now in better understanding what our patients are saying and better understanding the cultures out of which they are coming.
Swazey: That’s pretty new though, within the short history of bioethics.

Brody: Yes, although these people in San Antonio for two decades have been trying to teach us about the remnants of the four humors and the folk medicine of Mexico, with the thought being that if you prescribe a dry medication, not our sense of dry but their sense of dry, a Galenic sense of dry, to a Hispanic patient in Mexico, they may not take it. So they’ve been out doing that for awhile.

Swazey: It’s been around for a long time, it just hasn’t been particularly welcome in bioethics.

Brody: But lately, it’s been all stuff about death and dying in different cultures, and informed consent, and I think it’s all very valuable. The thing I did leave out, and I don’t know why I left it out because of all my funded research is being done with social psychologists, is the attempt to better understand decisional processes so that we can promote such values as autonomy; all types of people get involved in that. Psychometricians get involved, social psychologists, educational psychologists. We have a project that Larry McCullough and I are doing which is attempting to improve or to augment the autonomy of vulnerable populations in the informed consent process in research. One of the things we’re doing is developing an instrument to measure autonomy so we can tell when we’ve improved it. Working with a group of psychologists and psychometricians, we have instruments now that we are in the
process of trying to validate. They certainly have a lot of content validity but we’re
doing all the other sorts of stuff that these people do. And then, of course, we’re going
to use some other data that they’ve been gathering for us about what the subjects in
question perceive as the major barriers to their autonomy. We’re going to devise some
interventions and actually test them and then measure them according to these
validated instruments. We’ve got another project about end stage prostate cancer that
involves working with these people, and a third major grant about to go in, so I spend
a fairly substantial portion of my time working with psychologists whose work relates
to decision-making.

Swazey: Is this something you could have conceived of yourself getting involved in when you
came out with your bright, shiny degree in analytic philosophy? It’s fairly inimical to...

Brody: Actually, I had a long conversation with a colleague who’s an analytic philosopher
about that...

END OF SIDE 2, TAPE 1

Brody: You might come out of your ethical reflection to first believe in autonomy as a value
and you might come out of your conceptual analysis to develop a conceptualization of
autonomy, but how do you then find a way to measure it so you can then decide when
you are augmenting it? And then, how do you augment it? Those aren’t philosophical questions but you can’t design the instrument without deep philosophical analysis of the concepts. It’s a wonderful opportunity for analytic philosophers doing analyses of concepts and social scientists to work very closely together. Our pink sheets on all the funded stuff so far have commented on how they interact. So at least some other, crucial people, the ones who are handing out the money, thought that as well. We have another project—there’s all this stuff about maximizing utility, which comes out of philosophy, but how do you measure it? How will you know when you’ve maximized it? We have this other project about end stage prostate cancer that is really a model for studying how you would measure utility among patients. The results are actually devastating. Different measures are not consistent with each other. You can demonstrate major inconsistencies between people’s preferences and their utilities. Over time, it’s a disaster. When we finish writing up and publishing all the empirical data we’ve collected, I’m to write the final philosophical part, which in effect is to say if you say you’re going to incorporate patient values into decision making by doing decision analysis using utilities, you can’t do it. And we have data to show you can’t do it. So that’s a philosophically very important project.

Swazey: It is, but it is also clinically important.

Brody: Yes, and the people who are involved in it are a bunch of clinicians who became health
science researchers, a bunch of psychologists who are psychometricians—are decision people—and a group of philosophers who are... So we have built a very large group. That was three major funded project and a large number of grants about to go in and God knows I never thought I would do any of this. I’ve actually been the senior author on 9 or 10 empirical papers, and certainly that was not part of my training but it’s been fun.

Swazey: I think that is what I call really interdisciplinary.

Brody: We’re actually in the process now of looking for people who have strong strengths in their discipline but have clearly demonstrated that they really understand what we’re trying to do. We found some really good people and they all want to come, so now we have our choice. I’m excited about that.

I’ve got to go. One more question.

Swazey: Ok. A nice short one. Where’s bioethics going?

Brody: I haven’t the foggiest. Where is bioethics going?

Swazey: Yes, does it have a future?
Brody: Oh yes. The questions seem to me to be increasing, not decreasing. The interest is
great. A couple of things I think. I think it is going to go with a massive increase in the
number of clinicians who do bioethics. It's going to mean for the field that probably
the positions in the medical schools will be MD/bioethicists and the PhD/bioethicists
will primarily end up in more academic centers. I think that's one way the field is going
to go. And that partially relates to the economics of the field. If you hire yourself an
MD/bioethicist, they can attend for three months and earn more than their salary. Hire
yourself a PhD/bioethicist, unless they are lucky enough to get a grant, you've got to
pay them. So that's one way it in which it is going to go. I think the whole question of
the economics of the field is going to be a very big issue in the years to come. We are
training a lot of people. What is going to happen to them is a really serious and
important question.

Swazey: I said to Renée recently that I try not to be cynical, but I see the bioethics consultants’
interest into launching into organizational ethics as partly a matter of economics and
creating a new occupational niche.

Brody: No question about it. If you can tell people I'll not only solve your joint commission
need for your clinical but I'll also... Remember, now, the Joint Commission wants you
to have some organizational ethics. There's no question about that. So I think that's
going to be one of the major sort of things. Another thing is the internationalization of
the field, which I’m very excited about. The main thrust of my new book on research ethics is that we’ve got to stop thinking about this as an American discipline; that actually there is a massive amount of stuff going on in the rest of the world that is very interesting and some of it is better than what we’ve done. We have to open it up, and that’s not necessarily because of the cultural difference issue. Some is just because you learn from the more people you’re talking to and I think the field is going international although often not easily. Jeff House, who is my editor at Oxford, is a good guy. I wanted to include all these documents in the back of the book and we finally compromised on a portion of what I wanted to include. One of Jeff’s first remarks was, “Americans don’t care about what the rest of the world thinks, so how can I sell a book with a lot of international documents?” He then took that partially back, but I think not entirely, and he wasn’t entirely wrong either.

Swazey: We are very provincial.

Brody: American bioethics has been quite provincial. I’m a member of the European Society for the Philosophy of Medicine; there are about 12 Americans who are members. Many more Europeans come here than we go there, which is amazing because they always have their meetings at such interesting places. I don’t know why. At the meeting in London, I think there were three of us from the United States. A lot of people are interested in ethical issues in clinical trials. You would think there would be
a lot more... and London is a nice place to visit.

Swazey: You know, come hither and do it our way.

Brody: Nevertheless, the field is getting internationalized. The International Association of Bioethics is very important in this respect, and I view that as being a major second trend. In my own thinking about the field, two things: one, the economic basis and who’s going to get the jobs and be able to do the work is a big issue; and the other issue is, is it going to be an American or an international discipline? I guess a third trend is going to be that there is going to be a lot more empirical work that mixes the conceptual and the empirical... you can get grants for that. You can write a grant for the National Cancer Institute and get funded, not for purely conceptual analysis. We had somebody come down for one of the jobs, a rather senior member of the profession, who in effect said, “I only want to do conceptual work from now on,” even though he had done empirical work. But I think he was going against the trend. Now part of it is economic but part of it is that this is, intellectually, very exciting.

Swazey: That is a huge shift...

Brody: I wrote an article a few years ago about empirical research and what are the standards for empirical research and bioethics and published it in JMP and LeRoy told me that
he gives that as was one of the required readings of first year students because they never thought of that before.

Swazey: All right, sir, I have to let you go to your next meeting.

END OF INTERVIEW