

**Transcript of the Oral History Interview with
John Barkai
January 4, 2001**

Hall: The first question we're asking everybody is just very, very standard, kind-of open question. When did you first become exposed to clinical legal education?

Barkai: Okay. For me, I didn't have any clinical courses in law school. So for me it was a call from a local law school, Wayne State . . . and I was practicing law in Detroit . . . and simply asked me would I be willing to come and teach a course for a year as a visitor. And it was a clinical course, a criminal clinic. And then I stepped in and started doing that.

Hall: Hmm, okay. Had you heard or thought about clinical education before you actually were . . .

Barkai: (Interrupting) Not too much. I mean, I knew what was . . . a little bit of what was going on. I graduated from the University of Michigan, and they had started a clinical program. And actually, I guess, I did work in an appellate clinic as a

law student. So come to think of it, back then I did do that kind of stuff. So, wrote a couple briefs.

Hall: When were you actually in law school yourself?

Barkai: From '68 to '71.

Hall: Let me ask one question. A lot of people have expressed a sentiment that . . . maybe especially at that time, because it was such a politically active period that the traditional kind of teaching seemed a little stale or a little not quite current with the times. Is that a feeling that you had yourself?

Barkai: Yeah, I think definitely. Definitely. It would be clear from my law school experience, large classroom settings almost all the time, and no kind of hands-on or opportunity to really participate more.

Hall: What year were you hired to do the Wayne State clinic?

Barkai: 1973.

Hall: Okay. What would have been sort of your first few years of law experience from the time you graduated from U of M to the time you started?

Barkai: Really wasn't that long, about a year and a half. I worked in a public defender's office in Detroit and started doing major felony cases right away. And so that's what I was. I was a criminal defense lawyer doing . . .

Hall: Obviously, one theme of just the effectiveness of the various forms of education. When you first . . . During that time in the public defender's when you were a practicing lawyer yourself, how well prepared did you feel for what you actually encountered once you were in practice?

Barkai: Somewhat prepared. I had done some summer clerking and worked with a firm where I had an opportunity to actually participate in some of the trials that had

gone on. So I had a sense. I sat through a few trials beginning to end. Then after the summer during law school, I spent some time working with some people from that firm just going in and doing it. This was in a . . . Originally it was Liz Creek law students civil rights research council scholarships. So I was doing that during the summertime. So I think I had more experience than some of my peers, starting that, but it wasn't great.

Hall: Looking back, were there any sort of areas where you felt most rough in making the transition?

Barkai: Probably just practicing speaking out loud and participating in those kinds of things. I tend to be a pretty silent person, never participated much in law school. And probably the farthest thing from my mind that I'd ever become a trial lawyer.

Hall: How did the hire at Wayne State come about? Was there anything that singled you out as a person to make that contact?

Barkai: Not clear for me. The person left the job, and then my understanding is that a

number of people talked, and I'm not sure even if I was the first choice or not the first choice. But I was just simply asked if I would be willing to teach the course. I guess during my short time, I had a good reputation for what I was doing, both in terms of competence and being successful. And so I had an opportunity to do that, although I was told it was clear it was just for one year.

Hall: I actually have one last question before I go to Wayne State. What actually attracted you to becoming a public defender, versus any of the other forms of law you might have gone into?

Barkai: A public defender?

Hall: Mm-hmm. Yeah.

Barkai: That was the experiences I had doing summer work. Cause before that I had two degrees in business, a bachelor's and a master's degree in business administration. It was pretty clear to me that I was gonna become a corporate lawyer, and I ended up being a criminal defense lawyer. So about 180-degree shift.

Hall: Was there any moment of revelation that caused that to happen?

Barkai: Not directly. It was just those summer experiences and other experiences.
And, 'This was pretty interesting, and I think I'll give this a try.'

Hall: Now as far as Wayne State goes, obviously a lot of clinical programs were
flowering about the same time. How established was that program when you
were hired to join it?

Barkai: Not very established. We were working off of, I think . . .

Hall: How established was Wayne State?

Barkai: Okay. Not strongly established. It was operating off of CLEPR grants at that
point. And I think . . . Well eventually, as I got hired, it was a full-time tenure

track position, eventually. There were two positions: myself and Mark Stickgold. And Mark still does some clinical teaching, teaches here at Golden Gate, actually. But he and I were the first two people. And the program kept on going for about 10 years. And actually, they closed it down for a number of years after we left. And then it started up again just recently.

Hall: Were there individual clinics, or . . .

Barkai: (Interrupting) There weren't. There were just the two of us. And Mark taught a civil clinic, and I taught a criminal clinic. And that was it. There was no other funding. Eventually, I think during one of the grant years, we had a little money for staff attorneys. But essentially, almost through my whole career, we've never had a program that had money for staff attorneys.

Hall: Tell me a little bit about the program in its formative period. How many students went through it each year, and what were the approaches you took in the first year you were there?

Barkai: Okay. I think . . . For me, I had 12 students in the clinic the first semester. They did minor criminal cases. I thin initially what I did was I mixed minor criminal cases with major felony cases, cause that had been my experience. And I do remember that at the end of . . . I was trying to match students to either work with me or other attorneys on major felony cases in addition to their small cases. And I remember during the first semester during final exams, I ended up having to try an armed robbery case by myself. There were no student around. They were all involved in finals. And pretty much at that point, I made the decision that I was gonna work on minor cases that didn't require me to spend a lot of time in court really handling motions in case something happened so the students couldn't participate.

Hall: One of the things I get a sense of in just listening to you talk about the pioneering period is that maybe there had not been a chance to fully think through the educational process of this. You know, you were simply throwing kids into the courtroom or at cases. From an educational perspective, how did those early clinic years work at Wayne State?

Barkai: I guess it's a somewhat similar components to what might still be doing some. Reasonably heavy classroom component. So we did meet with classroom

things. And then students worked on and then tried minor cases. And I guess as I'm thinking back of that and the whole Detroit experience at that point, Mark Stickgold who is the other co-clinician, and myself, was pretty active lawyer, somewhat leftist radical, National Lawyers' Guild Community at that point. And they were doing a lot of things in terms of trying to train young lawyers and law students. So I think to some degree, we were kind of adopting and adapting some of those models, and really at that point didn't reach out at all to any of the national movements. I'm not sure in the first five years . . . I think in the first five years that I was there, I went to one conference that was related to clinical education.

Hall: So you're saying you basically did most of your litigation just on the local level with . . .

Barkai: Yeah. And it was just a lot with Mark and myself, I guess. A lot of brainstorming. And we called them after five discussions,' and we would have them any time during the day. But they were our after five discussions.

Hall: Let me ask you. I mean, it seems from early on to this day, there's been a lot of

discussion as to whether clinical education was mainly a way of promoting social justice versus a way of . . . a better classroom or educational experience for the kids. What was your perspective at the beginning, and how has it evolved over time?

Barkai: For me, I think it was a lot more social justice, and it has evolved to a lot more skills training. And part of that is a switch from moving, for me, from Detroit to Hawaii where when I left Detroit, which is very active . . . pretty radical Bar . . . to Hawaii which is much more milk toast. The most radical organization was probably at that point the ACLU rather than the Lawyers' Guild or anything like that. That started evolving towards working with skills rather than the social justice movement. So I think I'm really quite in the minority of the general clinical movement at that point with that focus.

Hall: By focusing more on the skills, you mean?

Barkai: Focusing more on skills, yeah.

Hall: Yeah. In terms of trying to make a social justice component a part of what people are experiencing, how did that affect what cases you selected? Or just how you ran the clinic?

Barkai: I guess it was pretty early on. It's a research question that changed this for myself. Unlike a lot of people, the two schools that I've been with, the clinical position I've been in has always been a tenure track position. And that meant for myself I had to write and publish. And I also had to teach additional substantive courses. And in a lot of clinical programs, people just do clinics, for example. Or they work with a number of people and have staff attorneys. And they can take on, I think, much larger cases. So to me, I think as kind of a personal survival mode, I liked the idea of having an opportunity to have my students work on small cases where they could really run the case. I could be the safety net, but they learned a lot by doing that rather than me handling major litigation and them doing a small part of it.

Hall: Who actually selected the cases that your students handled?

Barkai: As I look back, I think at that time it was simply the court. The cases were

available. They needed counsel for it, and it was much the selection process than simply finding a case that my students could work on.

Hall: John, I'm sure you handled a zillion cases in the earlier years. Are there any that sort of stand out in your memory?

Barkai: You're talking about in the clinical program? Truthfully not. Cause most of them were at a really low level, misdemeanor . . . at most, process. And for me personally not, although I would say I think we'd all experienced this, that for my students, any case they handled, no matter what that was, no matter how minor, becomes one of the cases that they'll remember all of their life. But since I didn't really have a hand in those cases, I don't have that kind of a feeling.

Hall: Let me ask a question, cause there's a roughly short gap between the time you were a law student yourself and when you were an instructor. What was the most exciting thing to you about this style of teaching versus what you had gone through yourself?

Barkai: I think . . . Certainly initially, just learning how to do it, whatever that 'it' was. To be in court, to develop skills, to have an opportunity to really participate in *any* form of lawyering and using some of those lawyering skills.

Hall: For you, what were the biggest challenges to you in terms of like . . . okay, you're hired, you're gonna run this clinic . . . to the point where you actually felt like you had it up and running. What were the biggest challenges in getting to that point?

Barkai: One lead off of that question would be, 'What am I gonna teach students that I could reasonably reproduce the small seminars that we were doing for National Lawyers' Guild' and things like that, but what in addition to Trial Advocacy skills and lectured about interviewing and things like that, what I could use and produce. And at that time, early '70's, there weren't a lot of clinical texts out. And interviewing and counseling, which had become a huge field, almost all the material, for example, that was written about that was from the psychiatric social science perspective. So there wasn't much on that.

Hall: It sounds . . . cause I've got the sense from other people I've talked to . . . it's almost like you were left, to some degree, to sort of build your own curriculum.

What building blocks did you use to actually put it together?

Barkai: I'm trying to think. I guess initially my own experience. And both trying to match my own experience with what I thought would be the most exciting things for the students. So even though I didn't think, for example, it should come in this order, we probably start with doing things like cross-examination exercises, because that had the most jazz and excitement for the students. And I figured that once we . . . Obviously real cases excited them and got them hooked. But once they could see some immediate applications in some immediate skills, I thought we could then work back and get into some of the things that were less exciting to them, but probably more crucial to actually performing the lawyering skills. Like learning how to do a good interview.

Hall: What I was asking about what was the most exciting thing about this form of teaching was also from the perspective of the students . . . or the kids. What do they seem to most respond to about this experience?

Barkai: Cases. Real cases. Without a doubt to me. And I think that continues to be true. Classroom things are nice and interesting, and simulations are important

building blocks, but I think students tend to downplay most of those experiences and focus mainly on real cases. Cause real cases are just much more real and exciting to them.

Hall: Now did you guys do any kind of simulation those early years, or use some videotape or any of the other things that sort of came more into play?

Barkai: Yeah, I think we did. And we did a lot of simulations right from the beginning. Instead of students going into court unprepared, we would start out in the first or second week starting with some very simple mock trials or very short exercises . . . Learning how to do different things . . . the belief being that they would learn from the classroom experiences and then could translate it when they go into the courtroom.

Hall: I'm curious. I've not thought of this before. But the first time you were actually in a courtroom with one of your students up there handling a case, how nerve-racking was that for you?

Barkai: I think it . . . For me it actually wasn't very nerve-racking. Maybe it's just my make-up or how I would handle that. But I could see that most of our cases, the clients weren't facing any real jail time. They were not . . . if the student made a mistake, or I couldn't solve it in a some kind of way, nothing serious was going to happen to the client, at least in terms of loss of liberty. So the pressure was on the student for the student's own performance. And therefore I learned to take, I think, a much more hands-off approach. Guidance, but hands-off.

Hall: What actual kinds of cases were you typically drawing?

Barkai: Shoplifting, assault, trespass, things like that. And in the . . . I think the arrangements . . . cause I've gone through many different kinds of arrangements in this kind of program . . . But I think initially, many of the cases that my students had to try were what we call the same-day case. They got the case that day, and they were expected to go to trial in 15 minutes. So that meant, in my mind, a lot of preparation, learning how to do general skills and even simulating some of these kinds of cases. So they would then take this real case and try and fit it into their experience based on all the simulated stuff and do a few things and be able to proceed to trial.

Hall: As opposed to some kind of case where they could really be doing a lot of homework specific to the case?

Barkai: Exactly. Yeah. Those are kind of two different models, and I worked with both of them. Where sometimes we would get a case eight weeks before trial, and we could simulate that particular case and talk a lot more out about it. They could go out and do interview and investigation. But in a lot of minor case situations, that's just not part of the component.

Hall: Looking back at Wayne overall . . . I guess two questions. One is what do you think were the greatest successes of this model you did develop? And was it in any significant ways different at the end of the five years compared to the beginning when you first started?

Barkai: I guess for me, the difference . . . and I'm not sure how much it played in for the students, or that they recognize it . . . The difference in the development would have been the classroom work and the classroom materials. Both things that were produced from other places and I was able to produce. And the degree of

increasing sophistication in simulation and preparing the students. Because I believe the cases that my students were doing were less important than the skills they were acquiring. And while we were doing a criminal clinic, largely because those were the cases that would go to trial, and it was trial that was exciting people, most of the students are gonna end up doing civil practice, not criminal practice. So I wasn't trying to train criminal lawyers. I was trying to train and help students develop their skills that they could use in any kind of a legal career.

Hall: Are there any areas you can point to during the five years where you can say, specifically, 'In this area, the materials I was working with were more sophisticated by the end than when I started?'

Barkai: I think without a doubt, particularly the interviewing materials. And I'm almost trying to visualize my bookshelf and what came out at one time. But the two early significant writings to me were the Binder & Price interviewing book, and Bellow & Moulton lawyering skills, or lawyering process book. I think they both came out while I was at Wayne State, or at least some of that kind of material was starting to come out then.

Hall: One of the things I was struck by, and you had said that you did not do a lot of national networking with people. Is that this program was sort of defining itself out in various scattered and disparate places. How significant were things like the Bellow & Moulton text, and the Binder & Price text for you?

Barkai: I'd say they were real important. They were materials that were directly applicable to what we were trying to do, in a good format, well produced, ready to go. They were just amazing at that point. And so we just kind of gobbled them up, although I think even with the Bellow & Moulton, some of that book was so good in detail that after using it once or twice, I think I kept it mainly for myself and less for the students, because it was almost too theoretical in some areas. And they were focused more on the cases.

Hall: And one other thing. You had said that your situation was a tenure track position, forced you to do some writing. Basically, again one of the things that I've heard discussed a lot is the notion of the intellectual component of clinical education. What kind of work did you focus on in terms of your own . . .

Barkai: My own scholarship work?

Hall: Yeah.

Barkai: Focus on . . . I guess one would be lower . . . I'm gonna simply call it lower criminal courts and what kind of justice we'd have there with some kind of comparative focus between courts in the U.S. and courts in Cuba where there was some material at that point. And then that was a reasonable work, but I'm not sure enough to get tenure. And then the other thing I wrote at Wayne State that was useful for tenure was a very classic article on guilty plea analysis. Besides teaching in the criminal clinic, I taught criminal law and/or criminal procedure, one of those courses each semester.

Hall: I'm gonna ask you what led you going to Hawaii, but is there anything else on the Wayne State period that's worth mentioning?

Barkai: Not much. Other than I guess that it was just . . . Some of the pre-interview questions I saw for this just talked about mentors. And I guess at that point, my mentors at that point would be some of the practitioners that I was working with,

and also Mark Stickgold, who's about five years my senior, who had been much more of a litigator before he came into the clinical program.

Hall: Tell me a little bit about your interaction with him and what you gained from him.

Barkai: Gee. I mean, I think our interaction was wonderful. We had a wonderful, delightful time. We didn't actually co-teach courses, but we spent a lot of time talking about what we were doing and working together and things like that. So from those early years, some of those folks remain my best friends, people that I have worked with and work closely with.

Hall: What kinds of issues did you and Mark discuss in the five o'clock conversations?

Barkai: A lot of pedagogy stuff about how to teach it. A lot of trying to figure out just where it's going to go. A lot of trying to figure out the place clinical legal education was gonna have, particularly in that school. We were . . . I guess, in kind of a classic clinical sense . . . we were in an annex in a building next to the law school. So we weren't fully integrated. Although compared to many of

my clinical colleagues that I got to meet later on, we were much better off than they were. We were full time faculty members, had all votes, rights, and responsibilities. And so I've actually never been at a school where I've had anything less than parity with my colleagues. Maybe at Wayne State, there might not have been that feeling, but all the time I've spent at Hawaii might last 22 years or so. There's just been no difference between me and any other faculty members as far as I can tell.

Hall: Actually, at Wayne State, in terms of your relationships with some of the traditional instructors, did you encounter any kind of snobbishness or any sense of being a less-than teacher at all?

Barkai: I don't think I ever encountered it, but I perceived it. And I think early on in the clinical movement . . . and now I'm gonna say probably late '70's, early '80's and so, and when I started going to the national conferences . . . there was a real pervasive attitude about that. And I somehow think it . . . At least my experiences were it was all wrong, at least in terms of my experiences. I didn't encounter that. But for some reason it seemed really necessary for the clinical people. So there was a phrase that I always had in my mind. And it was 'We work harder than they do.' And that was the clinical people always believed that

they worked much harder, and they were much more dedicated to legal education than their colleagues teaching traditional courses. And somehow that was important for those people to coalesce and move forward. But all my experiences with most of the people who were teaching other courses is that that's not true. I mean, there are certainly people on the periphery. And probably there are fewer clinical people on the periphery who just come in and do their work and then go home, that people do get much more immersed in that. But anyway, that was . . . that's kind of the feeling or attitude out there.

Hall: Let me ask you one last question about some of the five o'clock conversations you were having with Mark.

Barkai: Sure.

Hall: Did you have a sense of creation that you think you might not have had if you had just been teaching a traditional law class? Did you have a sense of really actually kind of inventing something neat here?

Barkai: Yeah, I think so. Largely because there were no materials available, and we could go . . . both the ups and the downs . . . we could go anywhere we wanted to. We could put anything we wanted into the course. And some of the things that initially went into that course, started learning them in small chunks, sometimes got spun out later into bigger courses. At some time, I've taught a complete interviewing/counseling course for the whole semester. What used to be one or two sessions on negotiations has, for me, become a prime teaching area. I teach negotiations and ADR, International Dispute Resolutions, that are whole courses that are taught on that now. So from those kernels, the development has been important for me. And the literature has evolved, the texts have evolved. It's been, I think, just different than in the traditional courses. Cause there always has been the evidence text. And there always has been the other kinds of texts, at least as those of us who are currently teaching can remember.

Hall: On the flip side, are there any things you tried early on that just turned out to be dead ends? You know, things that when you tested out, it just didn't work that effectively?

Barkai: Nothing real specific that I can remember. I mean, some years and sometimes, it was just a lot harder to get cases. We were always kind of at the mercy of court,

court administrators, program directors, how much they're willing to cooperate with us. And so sometimes we just . . . We couldn't get cases. We were trying to get cases from another jurisdiction for example, and sometimes we couldn't have 'em. We couldn't get 'em. And so the students are looking for cases and all we can provide them is simulation. And so those kinds of these . . .

Hall: (Interrupting) Actually, that's something we've talked about that might . . . What was the level of respect and cooperation you generally got from the court system itself or the justice system?

Barkai: I think pretty positive. I think it's positive now. It might have even been more positive. I mean, there are always gonna be a few people who'll be kind of the Neanderthals and don't want to have any student in there, because the student would take more time than anybody else. And maybe because they're more prepared. But I think by and large, especially at that time, judges really kind of liked that. They kept saying almost to themselves, I believe I could believe I could almost hear them say, 'Gee, I wish there was a program like that when I went to law school, that I had an opportunity to do something like that. And this really is a way of creating good lawyers.'

Hall: One last question relating to the clinic. What was the actual physical facility like? I know you mentioned you were in a . . .

Barkai: Right.

Hall: But when you actually walked in the door, what were the conditions like?

Barkai: Not bad. It was essentially a new faculty office within an attached building that tended to be a little colder than the other offices because less insulation and things like that. Although the people who were in the annex . . . I'll call them more marginal programs, but also to us important programs and people doing important work. So there was a national housing clinic. Allen Houseman had an office there. And so a lot of people sharing similar interests. So once again, it was both an isolation, but the isolation was an important bonding process for the people doing that kind of work.

Hall: Tell me what led you to Hawaii.

Barkai: Thirty-two years in Detroit. I think quite simply, I had gotten tenure there. I think by the point my friend Mark Stickgold had already moved to Golden Gate. And at one point I just decided that I just didn't want to retire in Hawaii. And I sent out applications to schools in Boston, San Francisco, Colorado, and Hawaii, and just saw what might work out. And I ended up with a job in Hawaii.

Hall: Tell me about the program and your position there, but also what were the biggest changes or things that most stuck out when you actually landed in Hawaii and went to work there.

Barkai: Okay. Well, when I got there, there really wasn't too much of a clinical program. They' started a couple of times . . . Peter Hoffman, another person who many of us probably in this process would certainly know, had been there for a year. And fortunately for me, he decided not to keep the position. So as I say, I moved into his house, moved into his office, bought his car. The only thing that went back with him was his wife. And I was able to step into that position. I was the only person doing clinic there. The one thing I remember is basically not wearing shoes the whole first year. Just wearing flip-flops, or zoris as people would say. But the environment and the conditions were clearly worse

than Wayne State. The school at Hawaii started the same year that I started teaching. And it was claimed and designed as a pervasively clinical law school, and they had somewhat of an innovated curriculum. But after a few years, it was to innovative, the dean got fired, and it kind of dropped back to traditional legal education.

Hall: Was that all before you had arrived? Or was that happening . . .

Barkai: (Interrupting) That was just be . . . That was before I arrived.

Hall: Okay. Did that have any impact in terms of how sort of the second generation clinical program was viewed with a little more suspicion or kind of keeping a more limited role or . . .

Barkai: No, I don't think so. I was I guess just pleasantly surprised that I just came into a situation where I was in a very small faculty at that point. We probably had 10 or 12 at the most. And now we only have 16 or 18. But I was clearly viewed as someone who was equal in status with everyone else on the faculty, and there

was no difference. Our physical facility was in temporary Quonset huts in a sense, but they were facing each other over this tiny little courtyard, and we all had the same offices, and no one was isolated. It was great.

Hall: Well tell me, when you said that . . . It sounds like when you're saying that the environment was worse, it's more like a case of maybe the programs . . .

Barkai: (Interrupting) Physical environment.

Hall: Physical environment, yeah.

Barkai: Just physical environment.

Hall: And that otherwise it's more just a case of the program was really in its very rudimentary stages when you got there.

Barkai: Yeah. And people were very supportive and say, 'Take this and develop it.' I mean they really . . . I'm not sure anybody actually truly believed that the program was supposed to be pervasively clinical. The design was that the whole third year law school was gonna be clinical, and it was gonna be much more of a clinical law school. But I don't think that ever really happened, and I don't think anybody really wanted it to happen. But that language remained in the catalog for the next ten years. So that was okay.

Hall: Olay well tell me, just in getting the program going in Hawaii, what were the highlights of all that?

Barkai: I guess the high . . . One of the main highlights for me was some grant funding. I can't remember whether it was called at that time Title XI. I don't think it was Title IX funding. But the same . . . the year before I had arrived, the school had applied for that. And maybe Peter Hoffman wrote the grant. But when I came in, we had funding to hire a second person on soft money. And soon thereafter we were able to hire somebody, I think in the first semester. And so this person became my very close friend. Then Jim was hired. And we co-taught all our clinical courses at that point. And so that . . . And so I once again had a buddy to work with, somebody that we could learn from each other. And we spent a lot

of time talking about our course. We'd about . . . we'd spend as much time talking about the session as our teaching session. And spend as much time debriefing the session afterwards.

Hall: What was it about it that made it that kind of . . . It seemed to really hold your attention. I get the sense just through everything you're talking about that you weren't just going to do it in the class. But there was a lot of time thinking about what you were doing. What was it that really kind of captivated your interest as you went along?

Barkai: Part of it is just Hawaii. Hawaii's just a excited place. There was, I think, more of an opportunity . . . even more of an opportunity to create a program. Cause it really had been more a civil clinic in Hawaii. And I was coming in. And I think most clinicians end up creating a clinic based on their practice. So my practice was criminal and so I was gonna create a criminal clinic. And so for me, it was all starting afresh, trying to develop contacts, where can I get cases, where are my students gonna practice, and set that whole thing up. So it's just much more of an open creative program for me.

Hall: Did your program at Hawaii pretty much follow the same patterns as what you

had done in Detroit?

Barkai: It did in the sense we were gonna handle minor criminal cases. It was set up differently. We worked much more closely with the public defender's office in Hawaii. Rather than just being assigned cases, we interviewed clients from the beginning of the program and worked through the public defender's office and was quite different.

Hall: This was '78 that you started . . .

Barkai: Seventy-eight, yeah.

Hall: Seventy-eight, okay. Just in general, what are the main elements and sort of the evolution of what you've done from the time you started at Hawaii, you know, through the years?

Barkai: Clearly, the biggest change for me is, I think for about five to seven years, I

continued to run a defense clinic. And then through a variety of factors that we could either discuss or not discuss, we decided to train and offer a prosecution clinic in addition to the criminal clinic. The person who was gonna teach it from the prosecutor's office couldn't teach it that year. And so my friend and I, Jim, split up. He continued to do the criminal defense clinic, and I started teaching the prosecution clinic. And it's pretty rare for somebody who has done defense work to move into prosecution. It's much easier . . . More people are prosecutors who then leave the office and then, as a practice, they go into defense work. So I didn't anticipate liking that. But I needed to fill in for that year. And it turned out, in my mind, to be very beneficial. So I really have enjoyed. So I've been doing a prosecution clinic the last ten years or more.

Hall: Well actually, tell me a little bit about it. Again, you started from the public defender's experience. My sense in the early pro . . . late '60's, early '70's, it would have been very unusual to have like a prosecution clinic back then.

Barkai: Right. It would have been. And I don't think I could have done it in Detroit, in the sense that I knew too many people who were defense and defense oriented in National Lawyers' Guild. And while I don't think they would have stoned me and driven me out of town, I just can't see that as happening in Detroit. And in

Hawaii, everything was open and I had the opportunity. And I just . . .

Hall: (Interrupting) This question is just educational. What made you guys decide that that was the way to go?

Barkai: I guess it was actually a lark in a sense that someone from the prosecutor's office proposed doing that clinic. And we said, as the school, 'Okay. We'll let you try it for one semester.' And we set it up and got students enrolled. And just before it was to open, that person . . . two people, actually, from the prosecutor's office . . . both got administrative promotions. They became division heads, and they said, 'Sorry, but we can't run that clinic.' And so I said, 'Well, we gotta run this course.' And so I stepped in to do it.

Hall: I'm sure you must have . . . the teacher must have been getting a lot of educational yourself in that case. What kinds of things did you learn, and what were some of the biggest surprises for you making this work?

Barkai: I guess trying to think like a prosecutor in a way, and figure out what to do. And

a major part of the defense clinic is preparing your case, working with your client, developing a relationship, doing interviewing and counseling. And all the work with clients does not exist in a prosecution clinic. It's just you don't really have a client other than serving the state. So it was kinda hard to displace that. And I think that's actually in the sense something that's missing from my clinic right now. We don't have that client contact. On the other hand, we can focus more on some of the skill work, spend a lot of more time working on, in addition to the criminal cases my students are actually doing, doing simulations on civil cases. And actually, I think students are more likely to do civil work anyway. And I guess the other thing from the students' standpoint . . . From the defense side, we used to take . . . Probably students would have two to four to six cases per year that they would work on, spend a lot of time on. When they went eventually for a trial date, usually they had no trial, and they ended up doing maybe one trial a semester. And in the prosecution clinic, my students would go and prepare five cases every week. They would go into court. One or two of them would be tried, and they ended up trying 15-20, 25 cases during the semester. And I said, 'Ah-ha! From a skills standpoint, this is a wonderful opportunity.'

Hall: You had said early on that you went more from 'this is about social justice' to gradually this became more and more about skills.

Barkai: Yeah.

Hall: How did it translate itself into . . . I mean obviously, this is one case. But in what other ways did the program change to sort of reflect that progression?

Barkai: Well I guess part of it had to do with the development of materials. Nationally the development of the materials, and also some of my own ideas for writing, which tended to be more in the communication/interviewing area. And it was, I guess, a personal interest. The depth and the intellectual challenge, for me, was in learning more about teaching rather than doing more of a certain kind of case. And I think . . . I'm not sure that explains it very well, but that's what kind of, I think, grabbed my attention.

Hall: Do you think the educational process is just better nowadays than it was when you started? And in what ways?

Barkai: Well clearly, the materials are better. And the people who are full-time clinical teachers have an opportunity to know, study, and teach this kind of material in much greater depth than ever before. There's still a lot of courses. We run a number of them at our law school. They're essentially run by adjuncts or *through* adjuncts, and their focus tends to be a lot like my focus in the beginning years. You're just trying to kind of replicate some of the skills you know, but you don't know the depth and the range. And I think this is true even in what we call traditional or substantive courses that we get an expert in wills and trusts would come in to teach a wills and trust course as an adjunct, and they know a lot of areas really well. But when you take the whole textbook and the whole range of materials, there's a lot of things that they just don't know about. And I think in clinical teaching, you keep focusing on those areas that you know a lot about. And if you don't have the time to develop and read and go to conferences and learn a bunch of other things, those other pockets of materials just never develop well for the students.

Hall: You had made a comment that I thought was interesting, but coming from a little different direction. When you were talking about in the '70's and '80's, you thought it was important for the clinical community to just sort of have some sense of identity. And then the case of 'we work harder than they do.' But because it's been evolved, I think, how important has it been . . . like even like the

meeting that's happening this week here in San Francisco . . . this process of continually getting together people from the clinical community around the country, how much of a contribution had that made?

Barkai: I think it's a fantastic opportunity on a whole variety of levels. I mean, I find it important. One of the things I always come away with is actually almost a sense of personal embarrassment that I'm not doing enough social justice stuff. Because there seems to be just such an important focus on that. And I think about it, and I go home, and I get back into my own environment, and I say, 'You know what? That coat, that suit, that social justice just doesn't fit my environment and what I'm trying to do and what I'm trying to accomplish and the other responsibilities that I have.' And so I kind of, I guess, done that balance. I've often had . . . I've thought about this a little bit . . . I've often had another teacher who has worked with me in a clinical program. And it wasn't in, I guess, this now 27-28 years of doing this kind of work. And it wasn't until last semester that a second clinical person ever got tenure. So some people focused a lot on their cases, but they never then met the rest of what the law school considered their responsibility of doing writing. And I think they were very good in what they were doing for a while. But they couldn't make a lasting contribution. And so for me, I think as I've said, I've kind of balanced things off, made it work for myself. Especially in Hawaii, we don't have a summer

school. And with no staff attorneys, that has a big impact on the kinds of cases you can take. You can't take major cases or civil cases. If you have things to carry over into the summer, you're either going to spend your own summer doing them, or you can't do them. And so once again, the structure of my clinic works well for me.

Hall: I don't get the sense that you see any real unfairness like in some of the writing requirements. Is it legitimate to expect that of a clinical instructor? Is anybody else gonna want tenure? Or is that a fair reading of what you're saying?

Barkai: I guess that's a fair reading for me. Other people doing that work would say that it *is* unfair, that if they were concentrating full-time on doing cases and working usually just in the clinic, that that's all they ought to have to do. To me, it's kind of the rules of the game of the school you go to. And the schools that I've gone to have always had that writing requirement and requirement for doing other teaching. And so I'm not saying the other thing is wrong, or that people shouldn't be doing it that way, cause we all make our own choices. So all I can say is the choices that I've made seem to have worked out well for me. But I can certainly understand it. There's still so many programs where people who do clinical work are not regular members of the faculty. They don't vote, they

have different contracts, they don't . . . They have all sorts of different responsibilities. And AALS and ABA have tried to do many things over the years, and there's still not any real sense of parity, I guess.

Hall: We're gonna switch tapes.

Barkai: Okay.

Hall: Actually, let me follow up on what Sandy just mentioned. What were some of the highlights of your being head of the committee? And I was also struck when you said that AALS and ABA have worked hard to sort of gain more parity. But I know that's something that was not always the case.

Barkai: Right.

Hall: Were you involved at all in any sort of the debates that led to sort of greater support from those organizations?

Barkai: I'm gonna say I wasn't. Cause partially, largely for me it wasn't an issue. And I'm quite a distance away. That's become a lot easier in the last few years since we've had e-mail and things like that. But it's hard to play much a role in that respect.

Hall: Okay. Well tell me about your being . . . You were head of the AALS clinical committee?

Barkai: It's the AALS Clinical committee I think it's called the Standing Committee on Clinical Legal Education. And I think it's a much less significant committee, and certainly position, than the committees and chairs of the clinical section. We were a group of people that met really twice a year. But once in Washington and once at the AALS meeting to go over a few issues of clinical education, and trying to draw a lot of things in there. But my sense is that the impact of that committee is very small, and it stands almost apart from the clinical section, which is the main movement and force of this whole clinical movement.

Hall: One thing I noticed in your resume is you seemed to have started doing more

international work somewhere along the way. Tell me a little bit about that. And is that totally separate from the clinical process, or do they intertwine in some way?

Barkai: They're intertwined. More and more, my international work is in international alternative dispute resolution, ADR. Or negotiations, in cross-cultural negotiations. But negotiations came out of clinic work. We started doing a little bit of that in the clinic. I have taught in the clinical program in Hong Kong, and I had a split appointment. Half the time was in ADR, and half of it was in clinical skills. And that's one area that I think carries over very significantly to . . . across cultures. The skills of lawyering, the performing, the going to court and doing those kinds of things. And in fact, as I'm saying those words, it makes me think of . . . One of the things that I think is really important about clinical education and my skills focus is, my clinic in my mind is a personal development clinic for a lot of students, particularly Hawaii. The students tend to be of Asian background, quieter, shier. They don't participate much in class. They don't speak up much. A lot of em don't feel comfortable about arguing positions. And so one of the things that my course does is get them up on their feet, talking a lot, going to court, and to me, it's really a developmental experience. And that probably parallels my own. I always felt really shy and introverted. I couldn't imagine doing trial lawyer's work, and I ended up doing

that. Hard to imagine teaching, and now it's very comfortable.

Hall: John, are those things that your students pick up just through the experience of what they're doing, or is it something you actually explicitly talk about?

Barkai: We talk a *little* about it. I tell them in the beginning of the class, if you're nervous, or if one of the reasons you're thinking about taking this course or not taking this course is because you're nervous about speaking in court, or things like that, then you must take this course. You shouldn't drop this course. This is exactly what it's designed for. We're taking low-level cases. No one cares whether you win 'em or lose 'em. It's all your own personal stress and personal development. And what a wonderful place and opportunity to develop yourself as a lawyer, and as a person to do this kind of work.

Hall: Tell me about, just in terms of what your sense of the clinical movement is internationally. What's the state of it right now? How significant is that in the overall scheme of where clinical education is these days?

Barkai: Okay. My focus is much more on Asia than it is in anywhere else. I mean, from where I live, it's equidistant to Chicago, Tokyo, and Sydney. So my focus has been much more on the Asian area. In a number of places of Asia, legal education is quite different than it is in the United States, where law is an undergraduate education. Most people go to law school and are never expected to be lawyers or practice. So, I think the United States really stands apart and *ahead* in many of these fields, especially clinical education where students are doing things while they're in law school. Some of the other schools, or programs, or countries, particularly from the old commonwealth times, have apprenticeship programs after people become a lawyer where they're doing a lot of the things that we would simply call clinical education. Doing things like that. And Japan in particular is in a movement right now where they're trying to make their educational process more interactive, more participatory, and I think there might be a lot of opportunities to assure experiences in Japan.

Hall: This is a different question, but I've been struck just while talking, and just thinking about some of the other interviews. A lot of people would not necessarily think that this was where they were going when they got started. Have gotten into areas like counseling and interviewing and sort of sub-specialties. What is it about clinical . . . the clinical experience that has led itself to that kind of development. Cause it doesn't seem like that was an area that

people focused on as much in the original, traditional sort of model of law school teaching.

Barkai: Hard to answer. I guess . . . I can only speak for me personally. It's just it's very interesting. The whole interaction process is very important. And the reality is that, especially with a focus on trials, is that very few times are you actually going to do a trial. That's the glamour, and that's what you see on T.V. But you'll do 100 interviews and have one trial. So it seems to me that that's where you ought to spend your time. I can't remember some phrase about . . . trying to think back to this, but something that for a lot of the skills that we study in law school. The amount of time we spend studying them is inversely proportional to the amount of time we'll use them. So we spend a lot of time on trials, but no one goes to trial. And we spend no time on interviewing, and little time, *used* to be, on negotiation. And that's mainly what lawyers do.

Hall: Is it because of the simple the fact that the clinical model force you, or invited people to interact with clients, whereas the other model didn't in regular clients? And therefore, some of the client dynamic became more of an intellectual issue?

Barkai: I think so. I mean, that material just wasn't available in the legal literature back at the time I started, except from a real psychiatric perspective. I mean, a Freudian perspective to some degree. There was little writing about that. There was Andrea Watson, a professor at University of Michigan who had written a little bit about legal interviewing and counseling; but, not in a way that was, I think, particularly useful grabbing or meaningful to the students at that time.

Hall: Let me turn something around. It seemed like when this got started, some of the pressure that professors felt was this notion that somehow it was not . . . there's none of scholarship involved in the clinical model. Yet it actually seemed to me as I've heard different people talk that there are areas distinctly where the clinical model might have contributed or expanded the scholarship. What do you think have been some of the most fertile contributions that clinical instructors have made to the law school process as a whole?

Barkai: Well there's certainly that scholarship focus. And I think, though, a focus on teaching . . . I'm gonna simply say, a real kind of careful look at how we teach and what we do, what students may learn . . . other ways of teaching, not just the Socratic or questioning, but much more participatory simulations. And I think we find that in many law school courses now. But often, my understanding . . .

It's been my experience that when somebody wants to try that in other courses, they'll turn to a person who's doing the clinical work and say, 'Can you help me design something or help me run it?' Cause one of the things I think that the clinical people are become very good at is process. Rather than leaving the discussion, they start a discussion and allow it to run in many directions that the students may want it to run in, in addition to trying to cover their own agenda for what they thought were, you know, learning or important points to cover.

Hall: What are you actually . . . looking over the time you've been involved, cause you did begin quite early on . . . what do you think have been the biggest successes or contributions from this whole clinical legal movement?

Barkai: Well, getting clinics into all the law school in the country. And multiple clinics. Not just one clinic, but many, many clinics. And a lot of that has been done through funding. In fact, I ran in today into Dan Power from Drake, who in my mind probably has contributed more to clinical education than almost anyone else. And I guess I'm moving away from Bill Pincus. But after the Pincus era, and in working with the Ford Foundation and the CLEPR grants, Dan has been someone who has kind of somehow played the behind-the-scenes games with Congress to make money available. And many people who are out there now in clinical education I think started through soft money, or their program started through soft

money through that.

Hall: Actually, that's a good point. Did you ever deal with Pincus directly yourself?
Is he somebody . . .

Barkai: (Interrupting) I didn't. And I was trying to think about that. I don't think I
have ever met him. I may have seen him at a conference or something, but I'm
gonna say I just kinda just missed him.

Hall: You mentioned Dan also. Are there any other people you can think of, or you can
point to and say, 'This is somebody who has been especially influential in the
development of clinical education'?"

Barkai: I guess the different people who are more meaningful to each person. I mean to
me, Meltsner and Schrag, those two people, who . . . Well, Phil Schrag I do see
once in a while. Mike Meltsner I haven't. But just some of their early writings
about teaching and the clinical model were very important and useful to me,
because both of my places, I was kind of in isolation. One at Wayne State in

Detroit, just because I *didn't* go to any of the other meetings. So, and in Hawaii. So the opportunity to read and see that kind of material and thinking that helped me formulate some ideas, and I think unleash just the creative opportunity to go anywhere that I wanted to I thought were really particular. And certainly people who have been head of the clinical sections, and people who have done certain kinds of writings were just initially groundbreaking in opening things up for a lot of others.

Hall: Let me ask a question. If you had to estimate, how many students would you say you've worked with in these clinics over the years?

Barkai: I guess I'd just have to . . . I'd have to do a quick set of numbers and just say, for me, it would probably be an average in just the clinic and not negotiations, cause that's a little bit close and different . . . but probably 15 a semester, 30 a year. So that would be about 600 over 20 years. And then floating on up. So we're talking maybe 900 people. I mean, in Hawaii even, I've worked with a high percentage of the people in the Bar. So, that's . . . We kind of get our fingers out there, our touch on a lot of people.

Hall: You had mentioned earlier that notion of the judge thing. You know, “I wish they’d had a program like this when I was a law student.” When you think of some of the 900 kids who have had the opportunity, are there any ways you can think of that you think that their experience, performance, what have you as practicing lawyers was changed or improved by virtue of having had a clinical opportunity?

Barkai: I think that’s one of the toughest questions, measuring anything that we have done. And maybe in that respect, I would turn to my colleagues who focus more on social justice. Because they can probably see students who they think they have influenced, or who have come to them and have nourished and developed their professional ideas and political philosophies and goals, and see that continuing. From a skills standpoint, I think it’s a lot harder to show and read in measure. So I mean, I struggle with that, both in the clinical area and also in the negotiation area where I can see much more of a developmental difference in the materials, just like the clinical area. But I always try and figure out, is a student that I had 10 years . . . assuming five years after graduation . . . a student I had last year compared to one I had 10 years ago, would there really be any difference five years out? Or would I make any contribution and any difference? I’m not really sure that I could say yes. I mean, I’d like to say yes. And I’d like to say, as we say in the clinical field, ‘We help people to learn. And once we’ve opened

up some passages for that, they can learn and figured out how to develop it'

Hall: Would be most helpful when you have that more doubtful, 'Well maybe it doesn't make any difference . . . ' sort of just to play 'em both out.

Barkai: Right. Well I think the most helpful part is the . . . Once again, we'll go back to real cases. It's exciting and motivating. For me, the clinical work and the ADR work really play back and forth. And it's in some sense hard to separate them. And so, one of the things I've really . . . I take things back and forth. One of the things I've learned from the ADR work, especially doing public seminars, is a lot of people come in and partially, they wanna be entertained during the time that they're there. They'll pay you money, but they wanna be entertained as part of it. And so I tried to play some of that and move that back into my clinical courses in a way. So it's entertaining, motivating. And I think if people are captured, entertained, motivated, wanna go forward for whatever reason, I think that's really beneficial, and that eventually they become better lawyers. But you know, in the law school, the students are taking about 30 courses during the course of their legal education over three years, I guess. About 10 a year. I'd like to think that my fingerprint is there somehow, but I'm not sure that it really is, or whether there's any way that we could measure that

contribution from a clinical course versus contributions from a whole variety of other instructors.

Hall: Looking ahead to the future, what do you think the biggest opportunities and challenges are for clinical education generally?

Barkai: I guess simply where is it going? With the higher cost of legal education, and clinical work being a more expensive . . . generally a more expensive way to proceed . . . I think maintaining clinical programs. And in fact, in some schools even getting students to *take* clinical programs. I haven't encountered that, and we tend to have a pretty good enrollment in a small school with a variety of clinics. All our students can get clinical courses, and they can end up taking multiple clinical courses. But I've heard in private schools with pretty significant tuition these days, that some students don't *wanna* take clinical courses because they wanna pay their money for certain other kinds of experiences and get out into the work force faster. So, where it's all going, I'm not truly sure. But there's certainly a continued and a big movement there. I think what we're finding in the development over the last few years is that there's just a whole variety of clinical courses, or clinical course work in certain kinds of developmental areas of the law. New kinds of legal problems are . . . Some

people are trying to solve those by creating clinics that deal with those kinds of cases. And so I think some clinical teachers will probably always be on what we'd call the "cutting edge" process. But, one area where I think clinical work is *not* touching very much . . . although some schools are starting that . . . is anything significantly moving away from poverty law work. There's very little clinical work for people who have a business orientation. And I think the whole legal education system is a little upside-down now in the sense that the people with the stronger political motivations tend to be the law professors, not the students. And there's some clinics . . . There's non-profit clinics, there's some kind of community development clinics where people *are* learning that. But a lot of students would like to apply business skills and corporate skills and commercial skills. And I don't think they find that outlet. And I guess I see that a fair amount in my own mind, just because of my experience in the business field and teaching in business schools, and also business school backgrounds for me . . . degrees.

Hall: John, last couple of questions from me. You said how clinical and ADR kind of go back and forth in your mind. What really is the inner connection between the two? Has your work with dispute resolution some way been spawned by the clinical work? Or are they just two different entities?

Barkai: No, I think it's been spawned. I mean, negotiations is essentially a lawyering skill. And I'm gonna say maybe the first time for me, as I tried to spin off the course from my clinical work and my general clinic, and interviewing and counseling course, that went okay. And many schools have a course, but I don't think it's in any sense anything like the ADR field. I mean, in the last 20 years, we have an AALS/ADR section. The ABA has an ADR conference where 1,100 people in it at last April. And it's a whole different . . . It's become almost its own separate field, although it's still a part of lawyering skills. But we don't have trial advocacy conferences nearly as large as ADR or interviewing conferences. It's real important. And the skills that . . . There's a lot of clinical teachers that do ADR work. Same kind of skills: running simulations, process work, helping students develop. And so we see, I think, a lot of that.

Hall: Let me ask you. This comes back to that future question. Do you see the future of clinical work sort of just continuing more of the same of what it's done? Or do you actually sort of see it splitting off into a lot of different directions, sort of like second, third generation sort of ways of applying the model?

Barkai: I just . . . I don't know where it's going. It's going in any direction that

anybody wants to take it. It depends on how schools are setting things up. Frequently, they will already have a design clinic already, and people will come into that. I guess what happens in a lot of schools in the law school, . . . one course in the law school . . . once you get a course developed, and then a faculty member who likes to teach that course who is a competent faculty member, at some point based on their own personal interests, they wanna spin off and create a new course. And I just don't know what that new course is. I mean, maybe I've gotten too much gray hair at this point, and I've been in that field too long. I'm not sure where people who are just a few years into this field are gonna wanna take it 20 years from now. I don't have a crystal ball into that area.

Hall: Let me . . . This is gonna be a vague question, cause some of the stuff you're talking about has not been talked about before. You had mentioned earlier with the international thing that you felt a lot of lawyering skills were sort of . . . could transcend culture, that you could, in essence, take it to a different setting. Looking at the kinds of clinical things, the simulations and the focus on learning how to do what you're doing, is there any way of sort of isolating what are the elements of that clinical model that you can use to sort of spin off to different things? In other words, what is different about it, say versus the old kind of classroom teaching that allows you to use it as a way of creating new fields? Cause I get the sense from what you're saying that the openness of clinical work

really makes it more adaptable in a sense.

Barkai: Right, yeah. I think particularly in the simulation field, it's to create a simulation which requires students to become active, and to be active thinkers. I mean, my experience with people who've had Asian education is that they're not a creative thinker. And I think clinical education does that. In the negotiation field now, people are talking more about problem solving, although there's been a lot of problem solving phrases used in that kind of . . . that approach in the clinical field. But in a lot of Asian educations, people go to class, they're lectured to, and they don't participate. And I do a lot of teaching of young executives who've had that kind of education. And they don't expect to be called upon, other than to repeat back what I've told them. And they're flabbergasted when we start by a simulation. I say, 'I want you to do this negotiation.' And they would say, 'Well, you haven't taught me about negotiations yet.' And I would say, 'Well, that's the point. That's a part of the legal education,' or a legal education tool that we're trying to use. And they're both enticed by it and made nervous by it. But I think that that's what they're really looking for. So I see that as an opportunity to use it, and it can be used in settings even where you don't even know what the real problem is. I call it a 'shell-simulation.' I've used this a number of times in international work where I would say . . . land disputes in Micronesia. I'd go in and say, 'Okay. I want you to do a simulation

in land dispute. You folks make up the reason for the dispute.’ And within a couple of minutes, they’ll come up with a pretty realistic set of reasons. And I, as an outside consultant, could spend a couple of weeks in the jurisdiction and still not come up with a good problem. But once they have their problem, they can then run it, and I can apply my process skills of clinical teaching to try and help them work it out and learn other skills.

Hall: Is that sort of what you were talking about earlier when you can really sort of the process, you can really draw students into almost like creating the process that they’re wrestling with?

Barkai: One of the wonderful things about simulations is, although people are *somewhat* learning the same things, and through good de-briefings, you can make that sure you’re covering the same points, students are . . . I’ll call it . . . can kind of play at much different levels more so than any could in a classroom discussion. At some points, in talking about hearsay and evidence, some students are getting it, and some students are *not* getting it. And they’re just lost. And I think they get turned off. But in a simulation, some people are always getting something. It may not always be the same message, but they’re learning a whole set of different skills and levels, and they’re engaged by it. And I think that’s just a critical

piece. Keeping people's attention and focus, and then eventually using that as building blocks to improving their skills in the lawyering process.

Hall: John, sort of my questions are winding down. Sandy, I have one last one, but are you generally okay, or do you have any other thoughts or things you want to . . .

Ogilvy: I wanted to go back if we could, just very briefly. You remember that you'd actually done an appellate clinic at Michigan. Is there anything about that that you can talk about? The structure, what you did, perhaps the methodology.

Barkai: I can. And actually, it kind of brings a smile to my face. Because as we do this in particular, one of my friends that I always . . . *two* friends that I always see in Detroit. One is a guy, Stewart Israel, who did clinical teaching for five to ten years at Ohio State, and then at Wayne State and at University of Michigan. And then he was in the class with me. And Art Tarnow, who's the federal judge. He was the appellate defender at that time. And I guess one thing I clearly remember is putting the brief I'd written on the top of my car and driving 40 miles to Detroit. So I re-did that one. But that was the model of working on significant cases with a little bit of help. And to me, it just wasn't nearly as an

effective model. There wasn't, at that time, much classroom material, much work or help with that. And I guess in a sense, we had already learned some of those skills because they were brief writing skills and legal research skills. But I don't think that we had the tools and the methodology and the teaching knowledge to work nearly as well with that kind of a course. I think they still continue to do the course, and I'm not quite sure how it's operating and what they do in terms of substance. But a goal or focus of my clinical teaching has always been a lot of classroom material, in addition to the real case material, and try and intertwine the two. The students don't always see the connection, but I think I see the connection. And to me that's important.

Hall: From the students' pers . . . your perspective as a student, what were the limitations of the experience because of the things you just talked about . . .

Barkai: Although it was a real case, and in a sense that made it motivating, it was really so distant in a way. We had a transcript. We wrote a brief. It was months later before someone else argued it. We didn't participate in the argument in any kind of a way. And it was really quite disjointed. It didn't feel nearly . . . It didn't feel really nearly as real. And I guess it didn't have the immediate pressure of going into the courtroom. And so the personal development part, at least at that

point, was more a legal writing and some advocacy, and just not nearly as much of the kinds of things I see in minor traffic court cases or misdemeanor cases.

Hall: I guess my last question is, we've talked about a lot of different things. In a video on clinical legal education, either whether you've looked at it globally about clinical education as a whole, or just about your experience in seeing your students have, are there any thoughts you would like to see included in that kind of video?

Barkai: I guess simply the wide variety of different perspectives of what clinical education is. I guess the one thing that I really see from conflict resolution is that there are two or more sides to everything. It's really hard for me to get in an argument with people, because I always say, 'Well, from some perspective, you're obviously right. You have a strong belief on that.' And I think somehow, that sometimes makes me an effective mediator. It makes me a terrible person to try and have an argument with. And I just always can imagine, even with people I strongly would disagree with, that from their perspective, with their experiences, they have a legitimate perspective. And so that's . . . I think that's the one thing that I would wanna share. The methodology and the tools that we use are very powerful and exciting to students, and I think can create all

sorts of opportunities to do things. And I think actually, probably the best is simulations, real cases, and a strong sense of social justice, and motivating students in that way. But I guess I wouldn't wanna see skills downplayed, because I think many of our students, they're coming to law school to learn those lawyering skills and not learn other kinds of things.

Hall: John, one last question, which you either will be able to successfully grapple with or not. When you talk about it being a powerful and exciting methodology, is there any way of crystallizing what is it that grabs students when they're confronted with this model?

Barkai: Well, I think two parts of it. The real cases and working on real cases, and seeing some immediate outcome, and dealing with . . . especially when it's a trial course . . . dealing with people who are not playing a role. They're not there for their legal education. They're there in a trial. And so I think that's really exciting and motivating to students, and very informative. And I guess the second part is just the power of simulation. Even though it's not real, once somebody successfully . . . I'll call it kind of enters the simulation at any level . . . they're in a real simulation, and they're in a real experience. And we could probably take that apart psychologically and look at what they're playing

out and all the roles. But all sorts of things come out during simulations. And people learn about themselves, and they learn about other people as they're involved in it. And we just don't see as much of that. And I guess simply the participation. The classic law school Socratic method is one student is being asked questions, and supposedly everybody else is supposed to be thinking about those questions. And the reality is a few are. A lot are thinking about where they're going for lunch, and what they did before, or some other kinds of things. But if you would simply tell each student to match up in a pair with somebody else and have a dialogue about that, everybody's gotta talk and everybody's gotta participate, and everybody's gotta think about that. So that kind of activity level that draws people into it, even with any kind of a role, any kind of a simulation, any kind of a question, is just very powerful. And I would include that as part of the encompassing definition of clinical methodology. And that's where I see a lot of it being used in other classes.

Hall: One last, last question which always tends to be a dishonest introduction to the question by me . . . When you were talking about things coming up in simulations that nobody could predict or expect, where there just any sort of "for instances" or illustrations you could think of that would sort of spell that out?

Barkai: I'm gonna move to my negotiation thing for a moment. But very simple second part of the semester, or second class of the semester negotiation, where there's an opportunity to lie and be dishonest in a negotiation. And some people just have a perspective that that's a perfectly appropriate thing to do, either as a lawyer or as a person. Or this is just a simulation and a game, and it's okay to do that. And other people think that that's just terribly dishonest, and you couldn't possibly do that. And just learning about those different perspectives. So that creates for some students a pretty heated discussion. They feel betrayed. They feel suckered. They feel cheated. Others say this is part of life. You gotta understand how that works. And that kind of an experience for students, if properly de-briefed . . . or even without de-briefing . . . I think is an important lesson.

Hall: And you see that people even going through, they see the educational aspect of it by the time they're done.

Barkai: They see the educational aspect, and I see it coming up in journals that I would ask students to write. And things that are not immediately apparent to them, they may bring up several weeks later and say, 'You know, this kinda makes me think of what I was in a number of weeks ago. And I hadn't really thought about

it before, but now it kind of all fits together, and I see more of what was going on than I was able to before.’ And to me, that’s part of the educational process, helping them see more. So that’s where the methodology, I think, is really powerful in this.

Hall: Sorry. One last question. You mentioned journals. Maybe a few others mentioned it, but it has not been common. But if you could actually itemize ‘em off . . . kind of again going back to the early ‘70’s to now . . . what kinds of tools have come in along the way? A lot of people have talked about videotape and simulation. But what other kinds of tools for sort of awareness have sort of come in along the way?

Barkai: Journals, since we just discussed that. We gotta mention journals. And there’s a whole variety of ways in which people use journals. I use ‘em as pretty simplistic. I don’t go have people do extensive journals. They just do a few reports to me. Sometimes low technology rather than high technology. We’re looking at interviewing and counseling, or witness examination skills. You don’t . . . A videotape is nice, but it’s a lot easier in most situations to just turn on an audio-tape and review it and hand the students the audio-tape later. And you could do that just as effectively. There’s certainly all sorts of interactive

laser disk materials that are out there, and CD rom things, although my sense is that they're not used nearly enough or as much. They're still not on the desktop like a textbook would be, and students don't turn to them. And they're very expensive for the law schools. But I think mainly it's just back to the participative model using simulations. And we can use additional tools to kind of review that process. And almost all of that works out, I guess, best with things back at the law school. When you're in court, it's a lot harder to do that. And I've tried to have students write journals about their courtroom experience, and that's just real hard. They're kind of lost at that moment, especially the first few times they go to court. In fact, sometimes I would tell students that until you've had about four or five trials, I'm not sure I can really tell you and help you that much. I mean, I believe I actually can, but until they can lose their total novelty of the process and be able to see themselves both in the process and outside of it at the same time, they can't really critique themselves.