

**Transcription of Oral History Interview with  
Michael Churgin  
January 4, 2002**

Ogilvy:       Okay good.   Michael, what was your first exposure to clinical legal education?

Churgin:       During my first year at Yale.   The way that Yale curriculum was structured, there were required first courses only in the first semester.   And in the second semester, I was becoming a bit bored.   And a friend of mine, who's now on the B.C. faculty, mentioned that he was going up to the Connecticut Valley Hospital, which was a mental health facility, and would I like to join him?   So another person in my small group and I joined, and a few others and started participating and providing legal services to the residents of the mental health facility.

Ogilvy:       You did this on your own?

Churgin:       Well it was . . .   The Yale structure was very odd in those times.   Denny Curtis had just been hired that year.   There was interviewing going on for a second person.   Meanwhile, the program at Connecticut Valley Hospital was done in

cooperation with the legal services organization out of New Britain, and the hospital was in the middle of town, about 40 minutes . . . 30, 40 minutes from New Haven. And so it was sort of done under Yale auspices. We were obviously all Yale law students, but the supervising attorneys for this particular program at that point were the legal services attorneys. And one of the attorneys, I think, was actually an unsuccessful candidate for one of the slots that Yale was creating in the clinic at the time. And we were actively involved in day-to-day service as well as there was an impact law suit that was filed. In those days, it went before a three judge court. And that was kind of interesting for a first year law student to experience.

Ogilvy: What year are we talking about now?

Churgin: 1970. About 1971.

Ogilvy: Tell me a little bit about the kind of . . . the day-to-day activities. Did you go up to the hospital? How often would you go? What would you do?

Churgin: Generally we would go up . . . each of us would go up once a week, not at the same time. There would be some sort of sign-up sheet sometimes, or more likely we would be admitted to the wards. And it was known that we were coming through. And occasionally when we went up, we had a phenomenon. There were a bunch of lawyer television shows at the time, and someone would shout out, AThe young lawyers are here! The type of issues ranged from social security issues to civil commitment questions, to people seeking release. I mean there was a full range of activities.

Ogilvy: And are there any cases or any people that stand out in your mind from that time?

Churgin: There are individuals who stand out over the long haul with that program. Some had pleasant endings. Some had *not* so happy endings. There was one individual who I never quite could understand *why* he was at the mental health facility. His family was totally non-supportive. But I filed the social security disability application on his behalf, and we won at the Appeals Counsel level. And it went back many years, so there was a humongous lump sum payment that finally came through. Unfortunately, he had committed suicide at some point right at the time the money . . . the money had come through. I had set it up with U.S. savings bonds under the . . . to keep it in a place and also keep it out of the

hands of the commissioner financing control of the estate. And after I left Yale, he only had about a year and a half to use the money and he committed suicide. And then his family who had shown absolutely no interest in him ended up being the individuals to inherit the funds, which was truly unfortunate. There were some . . . It was an interesting opportunity. There were some features of the Connecticut law dealing with seizing individual's assets. And I was involved in a law suit challenging that practice, and also the practice of the Social Security Administration naming the commissioner financing control as the representative payee. And we challenged that in the case and got a successful ruling from the magistrate judge in the District Court. When it went to the Second Circuit, the individual involved was offered by the social security administration a hefty lump sum payment if he would withdraw from the lawsuit. And so the lawsuit at that point went away. There was another one dealing with prisoned hospital transfers. The case must have started . . . it might have been my second year in law school. And then we had . . . It was a 1983 civil rights action. We had a hearing in front of a federal judge, Judge Newman. And that was really my first opportunity in Federal Court. What was a very nice feature of Connecticut, partially as a result of Yale being Yale, is that the Federal Court adopted a rule that starting after your first year, you could appear in federal court. And there was the student practice rule for state court which was comparable so we could appear in court. And with that particular case, Judge Newman declared the prisoned hospital transfer . . . mental health prison to mental hospital transfer

statute unconstitutional.

Ogilvy: Heavy stuff.

Churgin: Yeah. It was a nice combination of day-to-day service for clients and impact legislation. The way the clinic was set up, I think you got one unit of credit or something each semester or two, something like that. But you could do it as many semesters as you wanted to. So once I started my second semester of law school, I continued my second year and in my third year. And in those days, the running of the clinic was a peculiar amalgamation of the supervising attorneys, Denny and Steve, as well as the students who were on the board of the legal services corporation . . . I mean the board of Jerome Frank Legal Services Organization. And the Yale administration didn't exactly know what to make of it all. There was an individual named Dan Freed who was nominally in charge of the clinic. And he had an odd faculty position also, cause he wasn't really the same as the other faculty. And I remember there was one meeting with Jeff Hazard who had been on the Yale faculty, one of the endless periods where the faculty was thinking, AWhat should we do with clinics? And he met with the students who were on the legal services organization board, and I was one of them. And I remember he saying, AWhy are you doing this? Why are you

interested in this? After all, you're gonna be the mandarins of the profession. That really sticks in my mind that the phraseology he used that we were gonna be the mandarins of the profession. Therefore we shouldn't be dealing with providing the legal services.

Ogilvy: Much of what you were doing then was under the . . . at least the umbrella of the Jerome Frank Legal Services Organization.

Churgin: Yeah. It was at a time when the funding through New Britain that had provided the money for the Connecticut Valley Hospital Services, they had their own conflicts and so forth. And they were out of the picture already by I think my second year. So it was . . . Steve Wisner was essentially my supervising attorney whenever we did mental health cases. Although there were times when let's say Steve wouldn't be around and you'd have Denny sign off on things. It was quite informal in those days. I think if we all look back now about what we did then, we would never let . . . I would never let my students do what they let me do. What happened, for example, is there was a provision in the Connecticut student practice rule that by permission of the court, the supervisor didn't have to be there. And there were times by my third year that I was not supervised in terms of representation. And that doesn't happen anymore at Yale, and it

probably shouldn't have happened in my days either. And there was one particular superior court judge that handled most of the Middletown docket, Middle County was not a very populous county. And he was the resident judge. And he took a liking to us, and he was quite willing to let me appear without any attorney. And then the probate court . . . there was this old guy who was the probate judge who part time job at that point. He also had his own practice, this guy named Stan Ishevsky. And we were such repeat players that he let us appear without supervision as well.

Ogilvy: What was the attitude of the administration of the hospital towards the students?

Churgin: It was mixed from time to time. The superintendent of the hospital sometimes articulated the view that if we could help solve their legal problems, that that essentially would make things better for the ability of the hospital to provide some sort of treatment. But some of the doctors on the ward weren't particularly hospitable. Some were. It'd vary. And there were some instances where they threatened that they were gonna take away our permission to have such easy access, and that we'd have to do certain hours and stuff like that. There would be sort of posturing, but we would generally go away. And then on the grounds of the facility, there also was something called the Widing Forensic Institute,

which was a facility that was for maximum security from the civil hospitals as well as the prison transfers, as well as the people who were acquitted by reason of insanity. And that had a separate administration. And while they had really elaborate security, sort of like a prison, they were exceptionally hospitable to having us present for largely the same reason that if something is really bothering someone, it would be a good idea . . . if it was a legal problem . . . to take care of the legal problem. And we had some very interesting cases. I mentioned prisoned hospital transfer case, and then there was another one when I was supervising attorney afterwards for two years. We had a situation where someone was transferred from the prison to the mental hospital. And if the person had stayed in prison and had become ill, they would be entitled to a certain amount of sick pay if they had been a good worker. But if they were transferred to the mental hospital, they got no sick pay. So our argument was that it was essentially discrimination against the mentally ill. Ann Thomas, who's now on the faculty of New York Law School, was the student involved in the case and I was her supervisor. And it was before a wonderful federal judge, Judge Bloomingfell, who set the case at a motions calendar that had all these major multi-hundreds of million dollars transactions on the calendar as well, and called our case and said, AOh, this is the 48 cents a day case,@ or something. And you could see these attorneys just . . . mouths just open up. AWhy are they sitting through our motion for summary judgment? What's going on here?@ And Judge Bloomingfell had wrote a beautiful opinion granting us relief.

Ogilvy: Do you remember the name of the case?

Churgin: Delafose v. Manson

Ogilvy: Okay. Did you just do mental health work through the three years?

Churgin: Largely. Occasionally it touched on some other stuff dealing with the prison project or one of the other projects. But it was essentially mental health, except . . . it was after my third . . . was it after my third year? I think it was after my third year . . . Two of us were funded during the summer to keep up with the open cases. And there was a provision under the student practice rules that if before you took the Bar exam you could still act, even though you've graduated, under the student practice rule. So we handled the docket, and then I did more than just mental health cases. And then when I was a supervising attorney, I did a wider range.

Ogilvy: It sounds from your description how you got involved in this that you didn't come to law school necessarily to do mental health work.

Churgin: Oh definitely not. And I had no real idea what I wanted to do. I worked for a law firm after my second year there and received an offer from that firm and was planning to take the offer. And I accepted the offer. In fact I was studying for the New York Bar exam, and I did that in New Haven by tapes. And I remember it was right around the July 4<sup>th</sup> weekend that someone had contacted the WT grant foundation. And basically they indicated they might be supportive to funding somebody as a supervising attorney and teaching fellow for two years. And I hand-carried the grant application sort of right before the July 4<sup>th</sup> weekend that year. And this was in >73. And then in Yale's typical way, four days later they called up and said, ASure, we'll fund it.@ And then I was asked to stay on. And I thought about it for a very short period of time, and then called up the law firm and said, AI'm not coming. Do you want the fee for the New York Bar exam back?@ And they said, AYes.@ And then I took the New York Bar exam then and then took the Connecticut Bar exam the following February.

Ogilvy: Were you then the first fellow?

Churgin: I was the first one, yeah. So what happened is then I did all sorts of cases and took part of the prison docket. We also had a program at the women's prison. Took some of that and continued with some of the mental health docket. And we all overlapped, so there were times when Denny would be involved . . . even though he mainly did the prison stuff . . . would be involved with the mental health stuff one way or the other. So we've worked very cooperatively. Everyone was in and out of each other's offices, and the students were in and out of each other's offices. I mean that's how we always operated during that period.

Ogilvy: Did you have anything that approached a classroom component to what you were doing?

Churgin: Yes. At that point, there had been one for prison legal services that Denny did. And I started one with mental health services with Steve. And Bob Dinerstein, in fact, was the student assistant for the mental health project my second year as a teaching fellow. And then someone who actually was a colleague of mine at Texas was the first one. So yes. We . . .

Ogilvy: (Interrupting) What kind . . . What did you do?

Churgin: We did basic cases dealing with mental health law, civil commitment law, things of that nature. And that was the classroom component. You got a seminar credit. I think it met the seminar requirement. It was a three-unit . . . *some* three-unit requirement. And then of course there was the field component, which was working at the mental hospital or the Widing Forensic Institute?

Ogilvy: What kind of materials were you using at that time?

Churgin: Just stuff that we created ourselves based on the cases we had done. We were very fortunate in that the federal district judge in New Haven, the two of them ran rather . . . well one in particular, Judge Newman, who's now taking senior status on the Second Circuit but at that point was a District Judge . . . he moved things rather quickly. And it was a pleasure, and it was such a contrast when I went to Texas where you could take seven months to get a ruling on a discovery motion. But Judge Newman was very prompt. But the other judge, this guy, was less prompt on ruling on things. But still things moved. And they were both

exceptionally receptive to having students and have our filings. The state judges I think were in some ways . . . found us to be a bother. But they were kind of liking the idea of Yale students participating in the Connecticut state courts. And as I mentioned before, the ones in Middletown were particularly supportive. And it worked out really quite nicely. It's just there are lots of problems with pieces of Connecticut statutes. Also problems with the federal prison stuff. And we filed a significant amount of impact litigation as well as day-to-day representation and trying to withdraw guilty pleas, stuff of that nature. Or handling mental health dockets and things of that nature. So it was a very nice mix.

Ogilvy: Are there any . . . You're now into your two-year fellowship? Is that right?

Churgin: Yeah.

Ogilvy: Are there any cases or situations that stand out from that period of time?

Churgin: Let's see. I mentioned the Delafosse one. One thing that happened that was

kind of interesting was one day, the Immigration and Naturalization Service announced that it was gonna start holding hearings at the Danbury Prison. And several inmates approached us to represent them. So Denny, Steve, and I got together and said, AWho's gonna do the Immigration docket?@ And I was the junior person on the totem pole, so I became the immigration lawyer, which ironically fueled an interest. I became interested in it, and part of my teaching now is the immigration course at the University of Texas. But a few immigration cases were kind of interesting. One, I discovered an American citizen, somebody who had no idea he was American citizen. He was facing rather automatic Adeportation@ as it was called then. And he started telling me his story, and something clicked in my mind about the derivative citizenship statutes. And sure enough, his parents had divorced at the right time. His mother had custody of him. She became a citizen when he was of a certain age. So he became . . . He was a U.S. citizen. So we went in front of the immigration judge and said, AYour Honor, I move to dismiss because he's a U.S. citizen. And the judge laughed and said, you know . . . I explained it, and he said, AOkay, we'll adjourn the hearing. So *then* what happened was the student gathered all the data to submit to the immigration service. At *that* time, unbeknownst to the student, and really unbeknownst to me, there was a statute that prohibited . . . a criminal statute prohibiting copying the naturalization certificate. And sure enough, the inmate's mother sent us the copy of the Immigration Naturalization certificate, and we mailed it on to the Immigration

Service. And a few weeks later, I got this packet in the mail addressed to me saying, ACould you please fill out this form so we will determine whether or not to prosecute or *not* prosecute. And the first question was, AWhen you violated the law, did you know you were violating the law? So I indicated I wasn't gonna fill out the form, and then got this begging phone call. AWill you *please* file it so we can close the case? And I said, No. And they said, AWell we might have to refer it for prosecution. And I said, AWell, you just do that. And I think I mentioned to the assistant U.S. attorney who would get that case was, and I said I think you'd get a good laugh out of it. And it was an interesting phenomenon.

And the other immigration cases. One dealt with a technical law issue, and another was an asylum case. There was a Haitian asylum case. And we got a descent in the Board of Immigration Appeals. And then we petitioned to the Court of Appeals. And at that point, that was an automatic stay. But the person was being held at the Immigration Naturalization Services' expense at the women's prison in Connecticut. And they sent her back on a non-stop flight from Hartford to Port Au Prince. During that tiny period from the time you get notice of the decision till you can file for the stay, after I left there was an agreement with the immigration people about how to resolve things like that in the future.

One of the asylum cases dealt with the Dominican Republic, and it was a

fascinating phenomenon because you had *no* idea if the person was reliable or not. They were telling . . . There was no way of checking it really. We found . . . For example, in the *New York Times*, there was a reference to the leader of the Guerrilla group that was in support of Bosch over Balaguer in the Dominican Republic at the time. And there too, we ended up with one vote in the Board of Immigration Appeals. And we ended up with a descent in the Second Circuit. And there were . . . Some of the immigration cases were rather interesting. Another prison connected immigration case was a situation where someone who had been in the country for his entire life as a lawful, permanent resident alien was involved as a mule for a very low level drug transaction. And he basically had *no* hope of getting any form of discretionary relief, because under the statute, people involved with drug cases just *couldn't* at that point. And we filed in federal district court and got a very interesting ruling. The courts just continued with this very narrow view that immigration consequences are indirect consequences of a guilty plea, not direct consequences of a plea, even though it's the most important thing of all. And the net effect was there was some language indicating how unfortunate this was, but tough. And so we then sought to have something called non-priority status, that they just forget about this person's case because he had never been . . . This is someone who had been . . . I forgot where from . . . but had never been *near* that country since childhood. And during the period . . . It was funny. During the period that I was the supervising attorney, I ended up supervising somebody in the Second Circuit prior to actually having

my *own* first argument in the Second Circuit. So a few cases they even permitted first year students to argue in the Second Circuit. And the students were all well prepared and mooted in advance and did really wonderful job. It was a lot of parole issues that came up at the time. And then my prison at the mental health hospital transfer statute was argued in the Second Circuit during the period I was a supervising attorney. So I didn't get another student to do it. I did that myself since I had done it below. And it was interesting to go after first year students basically had done arguments in these cases. So it was a wide variation of cases.

Ogilvy: As you were doing this, were you aware of other clinicians in other parts of the country that were doing anything similar?

Churgin: We were aware that other things were going on. CLEPR had a presence, and CLEPR desperately wanted Yale to be one of its grantees to say that they were giving money to Yale. And so even though the fact that the Yale programming, Denny and Steve, were certainly not faculty status, they still very much . . . and CLEPR was very much . . . pushing in that direction. Yale would make the most minor moves in that direction. So CLEPR . . . And I didn't really pay that much attention to it. Denny, who was the person who was really doing the

administrative arm of the program . . . was the one who largely was in contact with that phenomenon.

Ogilvy: Did you have a two year fellowship?

Churgin: Yes.

Ogilvy: And what did you do after that?

Churgin: I kind of liked doing the seminar that I did, and I liked the clinic. And so I decided that I would hold myself out for a regular tenure track position that would combine academic teaching and clinical teaching. And to my pleasant surprise . . . This was, by the way, the first year of the Hiring Convention that the AALS put on.

Ogilvy: What year was that?

Churgin: 1974 it must have been. Fall of '74. So that was held in Washington in that horrible Hilton Hotel. So it had a sense of vapor lock as every door opened on the half hour and closed on the half hour. And to my pleasant surprise, several schools were interested, and I lucked out. And the best two were Cornell and Texas, and both made offers, and I went to Texas.

Ogilvy: And so you got there in . . .

Churgin: Fall of '75.

Ogilvy: Fall of '75. And what did you do?

Churgin: Well I first, unfortunately, had to take my third Bar exam, since it was too short a period of time to waive. And amazingly, Texas refused also to transfer the multi-state score from Connecticut to Texas. So I had to take the whole Bar exam over again. But then my agreement with the Dean was I would set up a mental health program. And I met with the then county judge who was handling

the mental health docket and we set up a mental health program. And I have continued to do a mental health program every spring, pretty much except for the semesters I've been on leave since then. I also at one point did two types of other clinical programs. One was to do impact federal litigation dealing with state prisoners. What had happened was when I had first arrived in Texas in '75, this was before the Civil Rights Attorneys' Fee Act. So the local federal judge and I had a conversation. He said, "Well pick any cases that are on my docket." Speak to the law clerk and I'll point you to them and we could move them and involve a student. But the problem was that I did it only two semesters cause he was *so* slow with ruling on motions. So the students had nothing to do because the cases would just grind to a halt waiting for something to happen. So ultimately, I just finished up the cases I had taken and we stopped that program. Then the feds opened a prison about 10, 15, 20 miles . . . 20 miles outside of Austin. And the then General Counsel who knew me from Yale, because the Danbury program really was the major prison legal services program I think that existed in the country at the time. And the type of litigation done . . . We had lots of contact with all the prison authorities, parole authorities at Yale. So the General Counsel, guy came to see me and said, "Do you wanna do the same. . . Would you wanna do the same thing? So I did it for, I think, two semesters. But the same problem happened again because, of course, those actions are largely filed in Federal District Court. And the Federal District judge just moved at a *snail's* pace. So whereas in Connecticut you would file something and Judge

Newman would rule two weeks, three weeks, move the case along, you would hear nothing. Just nothing for months at a time. So I think the initial . . . We had a contract period. And then after the contract period ran, I just told the Bureau of Prisons we weren't gonna do it anymore. So since then I essentially just did the Civil Commitment program. And Texas had a very different setup. It didn't have a Jerome Frank Legal Services organization that coordinated the clinics. Rather each individual who did a clinic coordinated his or her own. So I did basic . . . essentially civil commitment cases and some other odd cases, but basically civil commitment cases, and it would be essentially the Spring semester.

Ogilvy: I wanna go back and talk a little bit about the structure of the program that you set up when you went to Texas.

Churgin: Well, it was actually relatively simple structure. I wanted to do the supervision myself, so I said we can't have any more than eight students max. And that was accepted. We really didn't need much in the way of office space because the interviewing . . . the people were essentially in the mental health facilities. So it wasn't hard very much to set up. I mean, initially the county judge didn't know how many cases he would assign, what the docket would be. And there were some slow weeks and so forth. But as the population of Travis County grew,

where Austin is, it really stopped becoming a problem and it was more than enough cases out there.

Ogilvy: What other clinics were in existence at the time?

Churgin: At the time . . . Can we stop a second? I need a glass of water.

Ogilvy: Sure.

Churgin: Okay. When I got there, there was a criminal defense clinic. And there was a juvenile justice clinic and a children's rights clinic. I think those were the only ones. And the model then in existence . . . there's been this evolution since then . . . but the model then in existence was there would always be a regular tenure track faculty member who would be responsible for each program. There was one more. There was general civil legal assistance clinic that worked with the local legal aid. That one was the hardest to administer because the classroom component was unclear what you taught. You couldn't just do landlord/tenant. You couldn't just do divorce and so forth. So over time pedagogically, that one

sort of died. So then the question was what other clinics should eventually be added? And at that point essentially it was it would depend on the interest of the faculty member. At least that's how these individual ones had been set up. And then an individual . . . An exception was made for somebody who . . . a lawyer who had no other responsibilities as a lawyer. In other words had no law practice, but would just . . . It was essentially someone wanting to do something part-time and would be responsible just for a distinct clinic. So that's how let's say the Elder Law clinic was established. And for a while we had a tax clinic in that same way. Then the person who was responsible for the juvenile justice clinic passed away. And the person who had been working with him had been working with him for a number of years, and so another exception was made so that he could continue doing the clinic even though there was no faculty supervisor. No tenure track or tenured faculty supervisor. And one of the others of us would sort of occasionally look over his shoulder. So then eventually someone came and was very interested in capital punishment cases, so there was a capital punishment clinic. So he was a tenure track faculty member. He subsequently lost interest in doing the clinical component of it. He still does the classroom component. So then there were supervising attorneys with the statewide . . . then in existence . . . Capital Resource Center which no longer is in existence. But there are attorneys. So there was another exception going on. And slowly the exceptions have almost swallowed the rule. There still is . . . The person that does the children's rights clinic is still a tenure track . . . I mean

tenured member of the faculty. I do the mental health clinic, but other people have gone in and out of clinics. And so we have this hodgepodge going on right now, and as a result there is an effort right now to try to figure out how to rationalize the clinics.

Ogilvy: You came to Texas \_\_\_\_\_ tenure track.

Churgin: Right

Ogilvy: Question of status was never . . .

Churgin: (Interrupting) Yeah. The issue of status was never raised. I mean, I came as an assistant professor. I was known at the very beginning. I was doing both clinical teaching and traditional teaching. The then Dean said, ALook. The first semester you obviously . . . is gonna take time to set up the clinic. Just participate in this one seminar with two other faculty members actually. AAnd the rest of your time set up the clinic, and then the next semester do the clinic. And it slowly evolved over years. This was probably after I got tenure that I

essentially did the mental health clinic every Spring, and it's six units for the student. And I do traditional teaching. Criminal Procedure and an immigration course, occasionally a seminar the other part of my time.

Ogilvy: What happens to the cases?

Churgin: Well that's the beauty of doing a mental health clinic that's with civil commitment. State law in Texas says the cases have to end in 30 days. The judge must set the hearing initially within two weeks, and continuances are prohibited beyond the 30 days from the date of filing. So the cases have to end, and there have occasionally been appeals, so they just carry on. Once again, the University of Texas is the big fish. And when I asked the Court of Appeals to let a particular student argue, the student practice rule was sort of ambiguous if it included appellate courts. And they said sure. And then we said the exam schedule is such, could we do *this*? And they said, ASure.@ And so as a result, there's never been a problem >cause the cases end. So it's . . . In that respect, it's been very nice. And the judge who's been the probate judge for the last eight, nine, ten years has been very, very supportive of the clinic in every respect. So it works out nicely. And he's somebody who takes the mental health code seriously. If we were in other parts of the state, I don't know if this clinic could

operate as effectively. But he will, for example, sustain objections based on hearsay and so forth, and entertain legal arguments and things of that nature. So while the hearings are informal in that we're around the table, the students question witnesses and do the full thing. Other parts of the state that would *not* be the case >cause some probate judges do not take the mental health code seriously. But he always has and it's been wonderful. And I was pleased that in fact, on the plane coming here, noticing that no one had filed to run against him since all judicial offices in Texas are elected. And he hopefully will serve the next four years.

Ogilvy: Looking back at your years as a clinical supervisor and then a clinical teacher, how have you seen your approach to clinical legal education change if it has?

Churgin: My approach hasn't changed very much. I mentioned earlier how much I was able to do as a student. Then in retrospect I think that was crazy. So I never let my students go to court without me, and I run herd on them closer than anyone ever ran herd on me. Looking back where I would prepare complaints and go to Steve's home . . . At that point, Steve used to live in one of the residential colleges with his family at Yale . . . and I would go and say sign here. Or I would go to Denny and say, AWe didn't really discuss this, but sign here.@

That just won't happen anymore, and it won't happen at Yale anymore either. It was sort of an evolving process. So I encouraged them obviously to do a lot independently, but I wanna hear about it. And the nice feature about the mental health clinic is that at the beginning of the semester, we have the classroom component being essentially didactic, dealing with mastering the mental health code. Then we do some exercise, cross-examining witnesses and stuff like that. And then they started getting cases. And to give you a sense of how nice the judge is, the judge stops assigning cases two weeks before Spring break, so there's no cases assigned during . . . the students don't have to give up their Spring break. And then the cases start again subsequent. And the way it works is there's a preliminary hearing . Pending the full hearing. And the full hearing will be the following Thursday. And the goal is that each student will get one case a week. And of course there's no control. I mean, some of the cases the individual client says, AYou know, I really like it here. I've been homeless, and I just soon stay. And we say, AFine. That's your prerogative. But obviously the student has the client interaction but hasn't done anything in court. In other cases they were highly contested. It varies totally. But it's a very quick turnaround. I don't know if I could do the same type of work two semesters in a row, because by the end of the semester, I am somewhat burned out with the mental health cases. And also the mental health system in Texas in terms of the quality of provision of care is rather low. Texas is *not* known for its level of social services. And the staffing situation at the mental health facility is *not*

particularly what it should be, and you become sort of really annoyed at the whole way the system is operating. It's good to get away from it after a while and come back to it the subsequent year.

Ogilvy: When we talked to Denny yesterday, he was talking about kind of his model of looking at clinical legal education more in terms of the institution itself over the mental health system in Connecticut: the prison, the parole system. Have you carried any of that into your work?

Churgin: It doesn't . . . I mean I've carried some of it into what *I've* been interested in. But in terms of the clinic itself, the structure of the way the clinics are done in Texas, you don't have the systemic approach. Part of the thing is actually if you did do a systemic approach, the Texas statute as written looks wonderful. It's your classic example . . . and it happens a lot in the mental health area . . . the law is written and the law is applied varies a lot. And perhaps if I were not in Travis County where the trial judge actually follows the law, and the law explicitly says an attorney representing a client shall resist court ordered mental health services *even if* the attorney believes it would be in the best interest of the client to have these services. I mean that's what the Texas statute says, and that's how it's followed in Travis County. But other parts of the state it's not. Now if the law

school was at some place *other* than Travis County, maybe my approach would be different. But my focus really is on the representation and the confines of the semester, while the Yale model was very different. You had cases that lingered years, took years to do. People picked it up and put it down. It was just a totally different structure.

Ogilvy: Now you've mentioned Harvey, and Denny, and Steve. Any other people over your career as a clinical teacher that might have influenced the way that you approached clinical legal education?

Churgin: Well in terms of being at Yale, no. It was really Denny and Steve. And I mean obviously, you learn a lot from working with your students over the years. Some students were essential into my development. But in terms of mentor, it's clearly Denny and Steve.

Ogilvy: Have you had students go on to do clinical work?

Churgin: Some, but not . . . The proportional numbers were greater for whatever reason

under the Yale system, probably Yale being that probably more people from Yale go on into teaching as proportioned than anywhere else. At Texas there have been a few, but not of the same number that were at Yale. And a lot of the ones actually from Texas who went on, some did clinical stuff, and some are now in a regular classroom teaching situation. So I mentioned Vale Thomas, and she's not doing anything with clinics. Vickie Jackson's on the Georgetown faculty. She was active in the prison clinic but doesn't do clinics at Georgetown. So it varies. And then you have people like [Bob] Dinerstein who obviously . . . well now he's an administrator so . . .

Ogilvy: Other than the clinic you do . . . the mental health clinic . . . are there any other activities or any scholarship or other activities involved with this as well?

Churgin: Well, mental health has been an interest of mine. So I did some writing on the Texas mental health code, and I'm doing some comparative research now on the UK and the U.S. in terms of dealing with individuals with severe personality disorders. So my interest in mental health is more than just in the clinical context. I do not do the immigration clinic at Texas. There was just no way I could do both clinics, because the immigration clinic would have continuing cases. So I was supportive of the immigration clinic getting off the ground, and

we now *do* have an immigration clinic with superb individuals. Barbara Heins, who has *years* of immigration practice, the main individual who runs that clinic. And I still . . . I teach the basic immigration course, and occasionally an immigration seminar, and occasionally write on some type of immigration.

Ogilvy: Even in a school as presumably as flush as Texas, clinical legal education is expensive and limited. What do you see perhaps as the future of clinical legal education? You could say at Texas, nationwide, *worldwide* if you . . . However you wanna take it.

Churgin: Texas is *not* that flush. The state support is now probably hovering at 20%. The rest is private support or the supplement in tuition that the law school's allowed to charge and the university gets back and passes on to the law school. But there's no question that clinical education is expensive. And I don't know how the rationalization process will end up turning out. The traditional way that clinic funding has been handled at Texas is that the clinics pretty much have first call on the soft money, so there's always . . . there's *more* than enough to cover all the clinical stuff. As the clinics have expanded, I think we now have nine that cost. And we were fortunate to get a new building, and the clinics are all housed . . . the ones that need offices . . . Well mine even has an office, but in the new

building. So that's nice as well. But I see clinics essentially as just one way of teaching. And I would hope that that's essentially recognized now, and that clinical opportunities are an important way for students to have part of their legal education. And I think there are very few law schools I would think now who don't have clinical programs. It's amazing how long, for example, it took for a school like Illinois to have a clinical program. And Tom Mangler . . . It was established during Tom Mangler Deanship. By the way, he was a former student of mine at Texas. Not in the clinic, but . . . And Berkeley took forever, and Chuck is doing a wonderful job there. And there are still some outposts, I suppose, who don't. But it's hard to believe that anyone thinks today that you could have a first class quality legal education without having opportunities for clinical experiences. I'm somebody who believes strongly in client contact. I think the diversity of opportunities presented by individual people who have their own personal problems really makes the clinic experience work well, something that simulation really, no matter how much you tease it, it just really can't do. I really have no idea on the worldwide level. There's a lot of activity, but who knows?

Ogilvy: Is there *any* topic or area that I haven't touched on that I should have?

Churgin: I'm sure there is, but I can't think of it now.

Ogilvy: Okay. Thank you very much

Churgin: Okay.

Ogilvy: Okay. We're clear.