

**Transcription of the Oral History Interview with  
Karen Czapanskiy**

HALL: What was your first experience in clinical legal education?

CZAPANSKIY: I was one of those people who graduated from law school before there was much in the way of upper level clinics or any kind of clinic. And, so in my first year of law school somebody came around saying, who wants to volunteer to help out over at the public defender's service? And, my hand shot up. Yes! And, even to really be a lawyer and get out of this classroom. As I spent the year as an investigator for the public defender; for a couple lawyers over at the public defender's service, both of whom ended up then later becoming members of the Superior Court Bench in the District of Columbia, which was great. And, it gave me a sense of what my classes were about that was completely different from anything else that was going on in class. But, I didn't then follow it up in my other years in law school for a variety of reasons. But, it stuck with me as probably the most important thing that had happened for me in law school. So, when I finished law school I was clerking for a judge, trying to figure out what I was going to do after that. And, the judge was Rita Davidson, an absolutely brilliant woman who had also graduated from law school in the years before there was clinical education. And, it was her sense that somehow, everything she had learned about actually being a lawyer had happened after her graduation from law school, although what it meant to think about law had been very much influenced by her time in law school. But, there

was a disconnect for her as there was for me. So, there I was looking for a job and I had met some people at America University, among them the director of the placement office and when she heard that Elliott Milstein was looking for a new clinical supervisor, she called him and suggested that he talk to me, and called me and suggested that I talk to Elliott. And, so she basically made the match. Now, Elliott and I talked for several hours. We thought this was going to be great. I reminded Elliott that I had never, as a lawyer, stepped foot in a court room. I had, as a litigant, on one or two occasions. I had as an observer because my father was a lawyer. And, of course, I'd been in court as an observer when I'd done investigations and I had read by that time, probably 250 transcripts of cases in the course of my clerking. But, I had never actually spoken as a lawyer in a court room. And, he said in classic Elliott Milstein fashion, no problem. I'll teach you what you need to know. And, then you'll teach the students. And, he gave me a variety of opportunities. And, my first one being a bail motion, which we won with a lot of prompting from Elliott about what I was supposed to do and say and how. I had also managed, by the way, to miss both of my opportunities to do moot court arguments in my first year of law school by convenient cases of bronchitis. So, I had never even stood up in a mock court room and acted like a lawyer up until then. And, then Elliott proceeded to try to educate me about how to educate my students. Eight of whom showed up a few weeks later. And, his approach was; we have a classroom component that he would co-teach with Jim Stark and me. Jim was the prosecution supervisor and I was the defense supervisor. And, then I would

meet separately with my students and I would help them go through the steps of learning what it was to represent clients and prepare a case. And, whenever I needed help, Elliott would help me. And, that was basically how we went through the whole year. We did a lot of misdemeanor cases. I made a huge number of mistakes. My students, of course, made no mistakes at all. They were fabulous, thank God, except for the one who froze up while we were in courtroom. And, I thought was going to drop out of law school, commit suicide, do all kinds of terrible things and has since become one of the best trial lawyers in Prince George's County, in personal injury cases. So, it was a very interesting and challenging experience, which I was eager to repeat. But, about two-thirds of the way through fall semester Elliott said, you know, if you want to stay in law teaching I suggest very strongly that you go to the meat market and get a job offer from some other law school, which I can then parlay into a negotiating position for you here at American and you'll get an offer from American and then you're be able to say forever and teach clinically or in the classroom, whichever one you want. So, I went off and got an offer from the University of Hawaii, which I then decided I should really accept, much to the upset of lots of people, actually, including, it turned out later on, me, but. And, that took me out of clinical education for awhile because the reason that I accepted the offer at Hawaii was not just that it meant living in Hawaii, which was pretty fabulous. It also was a law school full of faculty who were trying to figure out what it meant to educate lawyers in a very deliberate, very intentional way; starting from the minute they hit the door of the law school. It

was a fairly new law. I came in the third year of its existence and prior to my getting there these folks had sat down and made exhaustive lists of all the many things that lawyers do. It was very impressive. And, then they had tried very hard to figure out how do you expose students to all of those things. So that it would be an opportunity to bridge that gap that both the judge and I had felt, that Elliott had felt, that all of our students felt, between what goes on in the classroom and what goes on in lawyering. So, from the minute our students showed up they started into the role of being lawyers. We had them doing legislative hearings where they were representing clients in their first several weeks of law school. And, I became the person who was designing their simulating lawyering work that they would do through their first year. And, then the goal was that in second year they would take seminars that would give them perspectives on what it meant to practice law in a situation where they were creating law. And, then in their third year our hope was that we would have upper level clinics where they would actually represent people. And, we didn't have funding yet for upper level clinics. So, our first class came and went without having gotten that experience, although I practiced with a few students on a couple of small matters. Well, in one fairly significant matter, actually. But, the main thing was that we were trying very hard to inculcate the notion of being lawyers from the minute you hit the door. We thought this was particularly important because we were in a state law school. In fact, we were the only law school in the state of Hawaii and many, many of our students would go on to become leaders in the state. Which is what happens to lawyers

everywhere, but state law schools in particular are the places, the nurseries for the later leadership of the state. In fact, one of our very first graduates then spent a number of years as the governor of the state of Hawaii. We've had all kinds of very impressive and important leaders who are graduates of the law school over the years. And, so our hope was that some how we could change the kind of legal education they got so that they would never become disconnected from the most advanced thinking going on in law and at the same time the faculty would never become disconnected from the dailyness of law, as it was practiced, as it could be practiced, as it was thought about, as it could be thought about. It was exhausting. It was politically very innovative and challenging. And, in some respects we stepped on our own toes and in other respects other people stepped on our toes and in many respects the experiment never was fully brought to fruition. I was totally exhausted by the end of my first year and a half there, at which point my daughter, my first child was not even two years old and I was all of twenty-nine and I was burned out. So, rather than have my life just explode from the stress of it all I quit at the end of that year. My family and I moved back to the east coast and I joined the government; left law teaching altogether; where I stayed for five years, doing a lot of mentoring of young lawyers who had similarly graduated from law schools where the idea of what law was about and the idea of what they were doing in the classroom had very little to do with each other. I eventually left the government and through a variety of interesting steps, ended up in the clinical teaching program at the University of Maryland Law School in

Baltimore, which at that time was under the directorship of Clinton Bamberger. And, we; when I first came I did a general poverty law practice and then started developing my own specialty area, after awhile. And, it; through a variety of wonderful invitations from people in the community I became increasingly involved, as did my students, in work on behalf of people; of women, who had been subjected to domestic violence. And, over the course of the next 4 or 5 years we developed a full-service practice. We did some criminal defense. We did divorce cases. We did custody. We did child support. We did legislative advocacy around protection orders. We did protection order cases. We did clemency petitions to the governor in conjunction with some lawyers in the community. We did lots. I mean, it was a full-service domestic violence service clinic.

HALL: You're covering a lot of grounds. I'd actually like to step back and ask some things.

CZAPANSKIY: Yes, yes. Sure.

HALL: One thing I'd like to ask you, to keep it filed in my mind, were you involved in the cases that went before Governor Schaefer?

CZAPANSKIY: Yes.

HALL: Ok. I definitely want to ask you more about that in a bit.

CZAPANSKIY: Yes, yes.

HALL: Coming back, what year were you a first-year student, that you started working for the public defender?

CZAPANSKIY: 1970.

HALL: 1970. So, it's still very much kind of the, maybe getting toward the tail end, but it's still very much in that time of; where there's a lot of turmoil and tumult in the air?

CZAPANSKIY: Oh, yes. Oh, yes. Well, I'm a Berkeley grad from 1969.

HALL: Ok.

CZAPANSKIY: And, I took a year out; worked for Senator Cranston, who recently died; was attracted working for him because of his anti war positions. And, in fact, you may recall, that April, 1970, was when Cambodia was invaded. Well, I was reading all of Senator Cranston's mail. I was the organizer of his mail room during that month and we read 50,000 pieces of mail. You know, it was a pretty dramatic time. And, I went from that into law school, with the intention

of becoming a public interest lawyer.

HALL: Ok. Even with that intention; sounds like it was a bit of a shock to your system when you went from the intensity of what you were doing to something which was kind of a very theoretical approach to the law. Is that a correct reading?

CZAPANSKIY: It wasn't theoretical. It was doctrinal. It was a lot of case crunching. I had one faculty member. I mean, I was at Georgetown. Everybody was very smart. I mean, it was a lot of fun. But, mostly what we did was learn cases upon cases, upon cases. And, one faculty member from the first year who really impressed me that law wasn't always like that. His name was Frank Flegal. He, at that time was an adjunct; later joined the faculty at Georgetown, taught Civil Procedure. He had been one of the plaintiff's counsels in one of the early tetracycline class-action cases and he made me understand that lawyers make law. They don't just read cases. They don't just receive law. They make law. And, he somehow could get 125 students to think about that in a Civil Procedure classroom. And, that was pretty exciting stuff. But, in most of my classes we were figuring out what were the facts, what was the holding, what does this case have to do with the last one; not what the lawyer's role was in advocating, not, how do common-law lawyers think? How do statutory readings happen? What kinds of problems are people trying to figure out when they write this kind of language, as opposed to that kind? And, the notion that a rule that a court would follow might have three or four versions. And, that

lawyers write all of them. And, that they have certain values in mind. It's something that Frank talked about a little bit but most people didn't talk about. So, there wasn't even the notion that if you were to; that you had perspectives; that if you brought those perspectives to bear on the case as you might see different things coming out of them. That was something that, you know, I ended up bringing to it, which, of course, tagged me as a radical, that, plus the fact that my hair was long and I wore blue jeans to class when everybody else was wearing suits; I mean, this was Georgetown; everybody else was wearing suits. I carried a green book bag and, so, you know, within about thirty seconds after I walked through the door, along with the very other; the very small number of women in the class, I was tagged as the lefty in the crowd.

HALL: What made you so eager to jump into doing the public defender work and what was the most eye-opening element of actually doing that?

CZAPANSKIY: I was eager to jump into it because I wanted to be a lawyer who was in service to somebody other than a corporation or somebody else who was wealthy, which is what I was seeing around me mostly. The most eye-opening part of it was how many perspectives people bring to their experiences. The very first case I worked on was the defense of somebody who was accused of rape. And, of course, the lawyer who I was working with said to me, now, I know you're a feminist, you know, I'm not sure if he used that term, actually, in 1970. He probably said, I know you think a lot about women's problems and women's

issues and this case might upset you a lot because we're going to have to break down her testimony, but that's our job. And, you need to go talk to her and get her to tell you what happened. So, I went to talk to her and got as full account as I could of what she said happened to her. And, I came back and the lawyer and I sat down and went over what she said with great care and it turned out that they had mis-charged the guy. If you took exactly what she said, without undermining her credibility in the slightest, he had not raped her. The elements couldn't be made out of her account. And, so, it was such a fascinating thing to me because somehow a prosecutor had decided that whatever she said, it equaled rape. But, when you really looked at what she said; when you took the time and the care to think about what she was saying, it didn't equal rape. And, so, it taught me a lot about how terribly important it is to really consider carefully; to think carefully about what people are saying. She didn't want to get this guy in trouble, either. It was really all a variety of other circumstances that had led to her going to the police. And, so, it made me just fascinated with the many variances on, quote, unquote, the truth that actually exists. Something that students have, you know, an unbearably difficult time with; until they meet the first person to whom this is important. And, then, as soon as they meet that first person to whom this is important, so much else of what we do in life, you know, as lawyers, becomes pretty clear. It really; it imbedded in me fact skepticism, which I think is still one of the most difficult but important skills for a student, any kind of good lawyer to have, is fact skepticism.

HALL: How did it affect your experience of the law classes once you were done with the public defender's office?

CZAPANSKIY: I was both bored and tense. But outside, highly anxious; very, very bored. I mean, I just could not bear to sit still in classes. Knitted a lot of sweaters during law school. It kept me seated, at least. And, I knew that I was thinking about the meanings of those cases very differently from how the faculty wanted me to be thinking about the meanings of those cases. I also knew that what kind of public interest job I could eventually get would depend a lot on my grades. And, so, learning how to think like they look; like they thought, I knew was going to make a difference because I had to pass their exams. So, I eventually came to the conclusion that the right image for this was a mortgage. I had to make it through three years of paying off their mortgage; my mortgage; they held the mortgage. And, then at the end of it I could do anything I wanted because I'd have my credentials.

HALL: Two areas I'd like for you to give me some illustration. That first year with the public defender's, you mentioned this one case; the rape. Are there any other cases that really stood out in your mind or?

CZAPANSKIY: The other big one was the public defender's service that year brought a case against the D.C. jail; conditions case against the D.C. jail. And, I did a little bit of the interviewing for that; not a lot and did a little bit of the research for that.

And, what was fascinating to me was that they could remain a part of my model of what a good lawyer is; how the lawyers in that group could move very readily back and forth from doing the individual cases to this very substantial, very innovative at that time, class action that they were bringing. They knew that what they were doing in their individual cases was grist-for-the-mill for this other case but at the same time those individual cases were themselves, you know, the entire world for whoever was the subject of them. Just as the conditions case was the entire world for whoever was the subject of the jail conditions. And, that they couldn't separate those two things. The other piece of it was, while they're getting ready to bring this jail case, the D.C. jail case that they brought was about the men's jail. The jail conditions at the women's; that the women were held in were, no doubt, at least as appalling, if not worse. And, they were paying; they decided that, from whatever perspective, that was not going to be the source of their concern. That was not going to be the target of their concern. And, that re-enforced for me how important your own perspective is and what kind of lawyer you become. And, over the years, as I've done criminal defense work, one of the things I've been paying a lot of attention to is, what are the circumstances for women who are incarcerated and how are they different from the circumstances for men who are incarcerated and what attention do lawyers pay to those differences? And, what remained a theme for me is that having women do law makes a difference in the law that gets done.

HALL: It seems that what you're saying that the general law instruction you were getting did not give a lot of attention to this issue you've raised.

CZAPANSKIY: None.

HALL: Do you see much relevance in terms of; or actually, let me come back to the question I was going to ask. You said that it was clear that you thought differently about a lot of the cases that were presented versus how you were, quote, unquote, supposed to think; any examples come to mind?

CZAPANSKIY: Oh, well, the case that I became known for in my section was the West Virginia Strip Mining case. The West Virginia Supreme Court had a case where the mining company had signed a contract; standard contract with the farmer or owner of the property promising to restore; strip mine the land and then restore the land to its prior condition. And, then, they didn't. And, he sued. And, the West Virginia Court said, oh, but that clause doesn't really; it's impossible. I don't remember if the cleanup was impossibility or what, but obviously, you're going to lose. Right. The company wins. The farmer loses. And, everybody's going, oh, well, of course. That's because of this doctrine. I don't remember if it was a possibility or impracticability or something. And, I stood up and I said, no, they signed a contract. They must have known what the contract said. They were well-advised by good lawyers. They had the money. They made the money from the strip mining. They promised to take care of this. They should

be held to their promise. I literally got booed out of the room. I was literally the only one in the room who was willing to fight back on that case. And, after that, faculty members called on me with great care because they were never really sure what I was going to say. And, I think they were worried about what I was going to say. Yeah, with good reason because I was taking; I was just not buying the line that the person who won was the right person a lot of the time. And, that the person who lost was the right person a lot of the time.

HALL: What; coming to American University when you started working there.

CZAPANSKIY: Yeah.

HALL: What was Elliott's position at that particular time?

CZAPANSKIY: I guess; I'm trying to remember back. Elliott must have been the director of clinics.

HALL: Um-hum.

CZAPANSKIY: At the time. There was his criminal clinic that was divided into a prosecution clinic that; where students were placed in the office of prosecutors. I'm pretty sure they're still doing this now. Bob Dinnerstein; actually Bob's not running it either. He's now the Associate Dean. But, anyway, students were placed in

prosecutor's offices and then met in a weekly seminar during one semester.

During the other semester they did criminal defense in a different county. So, we used one county for prosecution, the other county for defense. We used our class room component to teach a lot of skills; interviewing skills, negotiating skills, how to build theory of the case, how to prepare a witness, how to write testimony, how to organize a closing argument once a motion to dismiss; so, all those things, I didn't know, but I learned real fast. And, then we had tutorials. Of course, with the students, fairly standard, upper-level clinic organization.

HALL: You said in one of those kind of sweeping comments, I made a million mistakes. What; you know, again, I'm sure you're exaggerating to some degree, but looking back, what were some things that inexperience caused you to do that you do differently now?

CZAPANSKIY: I was a terrible listener; still not all that good at it. Students who were really having difficulties; I didn't understand the full degree of how difficult these things were for them, very often or how to help them work it through in a style that was going to ultimately be useful for them later on. And, I think that's a skill that I became much better at with a lot of practice much later on but at the time it was extraordinarily difficult for me to.

**(Short Break)**

HALL: Well, coming back to you being a distinguished and well-trained instructor when you first showed up at American, what were your biggest challenges in helping kids; helping students?

CZAPANSKIY: Elliott was particularly keen on this notion of student autonomy as part of empowerment and the notion was, which continues to be in many parts of clinical education, that if students are trusted to make the decisions they'll take responsibility and that they will also treat clients with that kind of respect for their autonomy and their individuality and try to empower clients. And, so the notion was that you; if I recall this correctly and I think I do, that you try to get students to be the ones responsible for decisions in a very deliberate and reflective way, that they then have to debrief themselves on, you know, how they came to a conclusion and why and then figure out what the next step ahead was. Now, in some respects that's very nice if you don't know what in the hell you're doing because the student has to take the lead and you can sort of follow. On the other hand, it's very anxiety-producing if the student seems to be not taking much responsibility and you don't necessarily know how to get the student to take much responsibility or to plan and so, Elliott was pretty good at that, you know, helping me figure out the mechanics of this. You know, how you use the weekly tutorial meeting, how you use journals, how you use reflective memory. And, I could build on his experiences in doing a lot of this. I mean, it was pretty helpful. I've since come to the conclusion that I'm not sure that giving students as much of our attentiveness is a good idea. I

worry now whether we're saying to the students it's your development that's really terribly important. We've sort of forgotten or de-emphasized in some respects the part about how the clients are the ones whose treatments we're modeling. And, so, what you need to do now is take what we're doing with you and use that in your dealings with clients. Now, some students pick that up and get it and use it but other students really focus on themselves as the center of learning rather than the client. And, that; I'm not sure that's necessarily; I'm not sure that I've learned the right balance there yet and that I can really do that very well yet without focusing too much on the student's individual development.

HALL: The first class that you were in charge of or group you were in charge of, how did that actually work? Is it primarily active practice or was it?

CZAPANSKIY: Oh, yeah.

HALL: Ok. So, tell me; just tell me a little bit about the day-to-day out of what you did.

CZAPANSKIY: We were picking up actual misdemeanor cases from the public defender service in Prince George's County. So, I would go down there. The first few times Elliott came with me. We would go through all the cases that were pending in the docket. We'd pick out half a dozen or whatever number we

needed for the students to be working on; cases that we thought showed promise for having some investigatory meat of one kind or another and that were within the capability of the students to handle. So, we did a lot of minor property crimes, shoplifting cases. We did some assaults and toward the end of the semester we did or the end of the year, I guess, we did a couple of assaults on police officers, even, which was kind of; no, I guess, toward the end of the first semester, even, we did a couple of those. Each student was supposed to handle; I don't remember, it was two or three cases over the course of the semester; probably three; as a member of a team. So, we had to work on team dynamics. That was always interesting and fun. And, we would bring back whatever account the public defender's file contained; go over that account with the students. The student would then have to come up with an investigatory plan, execute that plan, constantly reporting back to me, usually in the form of a memoranda to the file, about what interview or phone contact or investigation or research or whatever it was they'd done. And, the case would be coming to trial within six weeks, usually, so, they'd have to be in touch with the client. They'd have to, usually, on many occasions, be in touch with the client, have to pursue any investigatory leads that the case produced, develop a trial plan, develop a negotiation plan, review all of those things with me, with the client. We're, you know, we're; it was a negotiation plan particularly and get ready for trial. And, we would, typically, mock out whatever was going to happen. Whether it was that it was the negotiation, or the trial, we would mock it out, either; usually, where we could, with the client

there, so that we could enhance the theory of the case through the actual testimony that we anticipated to happen. And, then, prosecutors in this kinds of cases almost never negotiate in advance, so we'd go down to court the morning of that trial and try to; if there was a negotiation that was supposed to happen, it was almost every case, that there was a negotiation that was attempted, the students would work on the negotiation with the prosecutor and if that was resolved, then they would represent the defendant in the entry of the plea or in the dismissal or whatever was going to happen. If it wasn't resolved we'd go to trial. And, we did go to trial in a number of cases over the course of the year. Not every; I think, probably, more than two-thirds of them settle, but we went to trial on a lot of the others. There were two district court judges down there, Judge Femia and Judge Woods who got to be very good buddies of us. Well, very familiar with us. One, a good buddy, the other not. And, they kind of enjoyed, actually, having people who were prepared for going to trial. And, our students, of course, treated every case like it was a, you know, the case of the century. So, they were always very, very well-prepared. Even the student who nearly fainted was extremely well-prepared for the trial. And, that was, in part, because that's clinical methodology and in part because I didn't know what in the hell I was doing, so, if they weren't very well-prepared, we were in very serious trouble. You know, every step that they prepared I prepared independently of them, so that if for any reason they missed something I could nudge them in the direction of filling in that blank.

HALL: Looking back, how good a model was that and how does it compare to the other models that you've sent?

CZAPANSKIY: It's a good model in the sense that students really do get a very good sense of fact sensitivity. They learn that they can stand up in a court room and make words happen. They learn a little bit about relationships with clients; sometimes a lot about relationships with clients. They learn a little bit about the criminal justice system and its limitations, as well as, you know, some of its advantages. I don't think they get much of a sense of themselves as law creators or of a system of legal activity that's pretty oppressive against poor people. They don't necessarily get a broad sense of what role race plays in the legal system. And, they rarely get much of a sense of the role that gender plays because almost all the defendants are male and, you know, and so, they don't necessarily see much gender dynamics going on. So, there's a lot that they faculty member can surface to talk about. And, sometimes that surfacing works to help students relate what they're doing in the individual matter, to the broader context of how law operates and how people different places in the society are going to see the law operating differently because of, both how law is supposed to operate on them and how they perceive law to be operating on them. But, it's a big struggle to get to that level of theory when students are very concerned about their individual case and their individual performance in that individual case. So, I think there are some real limitations to the methodology that I experienced then; that I think are sort of inherent in the

individual case model, probably.

HALL: Are you saying that because that kind of information might not be relevant to whether a student wins or loses a case? They tend to tune it out.

CZAPANSKIY: Yeah.

HALL: Ok.

CZAPANSKIY: Yeah. Yeah. Whether they win or lose; whether their performance is good or bad; whether the client is pleased or displeased, you know, whether the judge likes them or doesn't like them. That seems to be something students think a lot about; whether they get along in the system. And, I want them to get; be able to perform in the system, but I also want them to be able to critique the system in which they're performing. And, that's much harder to get them to do. Now, the full-service domestic violence clinic came a little closer to that because in addition to doing individual case work they were put in the place of having to figure out, well, if this statute; does this statute work for my client? If the statute doesn't work for my client, why doesn't it work? And, is it the statute that needs changing? Is it the judge that needs changing? Is it the client who needs changing? Is it the opposing party who needs changing? What is it that would help this person get through that barrier? Is it me the lawyer who needs changing? And, so they had, you know, they had more of an opportunity

to think about those things because every semester we had a bit of legislation or other kind of broader advocacy going on and their experiences in the individual cases were always pertinent to whatever that broader advocacy was.

HALL: Now, when you first talked with Elliott and you were just interviewing for this job did you see clinics as mainly like an opportunity to do more social justice work or did you think of it primarily as a different method of teaching law? How do those two intersect in your mind?

CZAPANSKIY: That's a real good question. I certainly thought that it was an opportunity to do social justice work. And, one reason I thought that was that I was pretty familiar with how public defender services outside of the District of Columbia worked based on their reputations, not based on actual, any actual experience at that point; other than reading transcripts. The judge I clerked for was a state court judge in Maryland and I'd been reading mostly criminal court case transcripts from Maryland during the year and a half of my clerkship and I was appalled, absolutely appalled, at what I saw most public defenders doing on behalf of their clients. And, it wasn't anything like what I had seen in the D.C. public defender's service or what the judge and I, when we talked about it, thought could or should have been done. And, so, one of the things I thought was, well, okay, this is an opportunity to really do first-class criminal defense work on behalf of at least a small group of clients. So, there was a big social justice component in that I was drawn to criminal defense work also because I

think, in general, if it's well-done it is social justice work. You know, I only continued to be impressed by the need to protect people from the criminal justice system ever since. So, that was big social; it was a big social justice agenda for me. I also understood that in terms of the number of cases students can actually do the amount of service was not going to be large. And, that was frustrating but it was the reality. And, if; since then had, had to think through that and a whole lot of other ways because I did some work in South Africa where the number of clients was just so huge compared to the amount of legal resources available that the law schools really are there; the clinics are there to provide service. And, the amount of training they give students is really fairly small compared to the amount of service that the students provide. And, so, it's a very different balance and it was one of the things that got me thinking about, well, maybe we're spending too much time working on the students and not enough time working on the service.

HALL: When you went to Hawaii, you were describing that model. It actually in some ways sounded, at least on paper, it's kind of close to what I've seen some clinical people saying that would be the ideal law school.

CZAPANSKIY: Right.

HALL: You know, that we're really going to try to create lawyers and not just the doctrine sort of approach. Why do you think it didn't get off the ground?

CZAPANSKIY: There are so many reasons. The specific matter of Hawaii didn't get off the ground, in part, because it was a very innovative legal education approach in a very socially conservative state. Most of the lawyers in the state who were in the governing elite at the time had been educated at Hastings, which, then, and until pretty recently, is probably the most conservative law school in the country in terms of pedagogy, I guess and that was their idea what a good legal education was about and it had certainly been an upward mobility education for many of them. Most of them were the first generation educated people in their families. They had been in the, you know, they had been in the Japanese-American brigade in the U.S. military in the second world war; literally earned their stripes with that annuity and then come back and used the G.I. bill to go to law school and take power in the state of Hawaii. And, that was their idea of what a legal education was about. And, our idea of what a legal education was about; our as the faculty, wasn't that. It was very different. And, there probably was some failure of communication in terms of explaining it. There was also, I think, some defensiveness that played into that politics. That somehow, we, the mainlanders, who were almost all white, knew better than what local people did; what was good for local students. There were a whole lot of political errors. So, that was one whole group of things that, perhaps, were specific to the Hawaiian environment. Why other law schools never picked up on it is a much more interesting question. Other law schools have picked up on little bits and pieces, including my own law school. But, it's an exceptionally expensive way to educate students when you're looking at it from

the law school environment of what it means to educate students. Other professional schools do spend these kinds of resources on educating students to become professionals. You don't get out of dental school without filling cavities. And, learning about how to stay in touch with the research so that you know that if there's a change in the material that's used to fill that cavity, you'll have the skills to know whether you want to adopt that new material or not for your patients. We don't do that in law schools. We disconnect law teaching from law practice. You know, we just; so, and a big part of it is the resources. We don't have the resources. My law school offers about a third, or has up until this year. I'm not sure it'll continue, but has up until this year offers about a third of the first-year class in the day program, an opportunity to do some legal work in their second semester, in the context of a regular first-year course. I teach it as part of a civil procedure course. I have 12 students. The other civil procedure teachers have 75 students. I have them for 6 credits. They have them for 2 credits but still I have 12, they have 75. It is cheaper, by a lot, to teach people in classrooms. What'll they learn about lawyering? They learn some. We have very smart people teaching civil procedure. They don't become engaged in the work of lawyering. They don't have that data from which to learn more about lawyering, either by themselves or in the context of watching other people lawyer in matters where they're directly involved. And, you know, it's just very, very expensive. And, most schools won't put those resources in. Our law school probably won't continue to put those resources in after this year. We've been doing it for about 12 or 13 years now, but I don't

think it's going to continue. Clinical legal education, I think, began with the notion that upper-level students would have that experience, but lawyering would ultimately become part of all of legal education, not just the upper level. And, even in; and, it hasn't happened and clinical legal education has not had that kind of pervasive impact. In some ways it's had some pervasive impacts, but it hasn't had that transformative impact on legal education that, I think, people hoped it would at the beginning.

HALL: I'm going to pause here for a second. We need to switch a tape here. Of course, you've obviously raised an issue – of why has this not had a more transforming impact. We'll come back to that later. That's obviously a pretty fascinating question. Just coming back to the time when you were doing government work, did you sort of put all these early experiences behind you or were there things you sort of chewed and mauled over as to, you know, what significance and lessons there were, you know, from those early things?

CZAPANSKIY: I didn't abandon them. I hung on to those notebooks that I created in Hawaii and I hung on to all my teaching materials, but I had no real expectation to go back into law teaching. I was very burned out when I left Hawaii and thought I was going to make a career in government and went into doing public; access to public information in the Carter administration as a, you know, lawyer with a bureaucratic appointment, not a political appointment. And, did that from 1977 through 81, which you may recall is the year that Reagan was

inaugurated. And, I was still committed to the notion that a democratic society needed access to information about what its government was doing. And, the very first policy that the Reagan administration withdrew at the Justice Department was the one broadening public access to information. And, the first attempted political firing in that department was me; a badge of honor that I wear to this day. He failed because or the Attorney General failed because, of course, I was a bureaucrat and I couldn't be fired for political reasons because I wasn't a Schedule C. And, so, I spent the rest of my brief time at the Justice Department looking for another job, basically. And, Rex Lee, who was the Associate General, was exceptionally compassionate and gave me a bureaucratic home to live in while I did whatever I needed to do to keep the pay check coming in while I moved on. And, so, I move on to private practice, actually expecting to set up a sort of quasi public interest practice doing freedom of information act work for the press, which I considered to be sort of good public interest work. But, unfortunately, there were very few newspapers or reporters who seemed willing to pay for that. So, I was quickly running my family into bankruptcy when the offer arrived from Maryland and I was happily saved from that fate. And, I thought it was going to be a temporary gig at Maryland. But it, for a variety of interesting reasons, turned into a permanent position.

HALL: When you actually went to work at Maryland how did your prior experience in sort of related, you know, jobs color or how you approached the Maryland

position?

CZAPANSKIY: Well, for one thing, I was a considerably more experienced lawyer by then. So, that was good. I actually had been in court rooms; in federal, in state court rooms by then. I had filed briefs and done other court - you know, I had done some interesting and exciting lawyering work. I had a much stronger sense of myself as capable of being a good lawyer. And, I think that helped me calm down a lot about my students and listen to them better. I was also much more overt about my feminism. And, that meant that I connected with some students very, very well and disconnected from others with equal intensity. So, there were some struggles around that in those first years at Maryland. And; and, I ended up teaching at women in the law seminar which made me extremely satisfied with what I was doing. I started writing in the family law and gender areas and domestic violence and got away from doing federal government and federal law kinds of things. All of which made me extremely happy, both in my clinical work and in my scholarship. And, it helped me develop a focus in my practice that could give students a range of experiences beyond the individual case work which I wanted them to do very, very well. I still wanted them to see themselves as active lawyers. The other piece of it was that because I'd been in government and done a little bit of private practice, as well, I could say to them with complete assurance that I was right, that being a good lawyer meant seeing what your role as a lawyer was to create law, not just to respond to it. That when you're in a situation and you come up against

something that doesn't go your way you have to analyze, is it because some characteristic of your client is disfavored? Is it because some characteristic in the law needs to be changed? Is it because you haven't been a good enough advocate? Is your advocacy colored by your own perspectives? All of those questions I could be very assured about asking and knowing how important they are in the real practice of law in real life.

HALL: It's funny you should mention that right now because I was actually going to come back to that notion of creating law. It seems like it was an idea that was planted in you early.

CZAPANSKIY: Yeah.

HALL: I didn't get the sense in your Prince George's experience it was necessarily a big aspect of the work you did with American University.

CZAPANSKIY: Right.

HALL: When did that really start reaching critical mass? \_\_\_\_\_ core idea that you really started passing on to students?

CZAPANSKIY: Well, we had a few occasions, even in the criminal defense work, where it was pretty clear that the local practice was one thing and the law in the books was

probably something else, and that an active lawyer would take those opportunities to pursue those options; those opportunities. And, so, we did some fairly innovative criminal defense work, even that year in Prince George's County.

HALL: If I may interrupt. Is there any example that comes to mind that would help illustrate that?

CZAPANSKIY: Yes, yes. Yeah, okay. There was the case where there was the case of the hidden pistol. Our client was arrested for possessing an unregistered hand gun. It had been found on the floor of the passenger seat of his car. He was behind the wheel, passed out and the car had come to a very gentle halt up against a telephone pole in a median strip somewhere in Prince George's County. And, he said he'd been at a poker game the night before and some guy named Joe had lent him his car. And, he had gotten in the car but he was quite drunk and had passed out, which was how the car had come to this gentle stop. And, that had probably dislodged the pistol and it had then come out on the floor to therefore be visible to the cop the next morning. Nobody disputed that the gun was there; that it was visible, that it wasn't a bad search; none of that. And, much to the surprise of my students, I said, fine, let's find out who owns the car. Go track this registration down. And, sure enough, the registration came back, Joseph somebody or another, not our client. So, I said fine, what'll we do now? And, they thought about and researched it and painfully, finally came to

the conclusion that we subpoena Joe. So, we subpoena Joe and Joe shows up and we call Joe to the stand. And, my students had prepared this wonderful direct examination in which they intended to get Joe to admit that, in fact, it was his car and his gun and that our client knew nothing about the gun being under the seat; and that it was under the passenger seat until the car had bumped into the telephone pole. Joe takes the stand and, of course, refuses to answer anything; absolutely refuses to answer anything. And, something in the back of my mind said, fifth amendment, he's not going to testify. The judge can immunize him. And, if he doesn't immunize him how can they hold my client liable? But, it was very moldy; very confused. I really didn't understand what I was doing. The students and I consulted for a couple of minutes. They decided that I should take over. I stood up and said some very confused thing about fifth amendment and our client can't get a fair trial unless you immunize and blab, blab, blab. And, damned if the judge didn't turn to the prosecutor and say, immunize him. And, I'm going, oh, my God, this is a District Court case and a misdemeanor charge and they're going to force the prosecution to immunize this guy. And, the prosecutor being as inexperienced as I was stood up and said, no. At which point the judge said, do I hear a motion, counsel? And, I said, move to dismiss? And, he said, right! It was my sterling moment. It was great. The students and I are looking at each other. The defendant is looking at the three of us and we're all kind of going, well. Joe stalks out of the court room, convinced he's going to be prosecuted now for this gun and I don't think he ever was actually. And, the students and I forever after that

concluded that somehow we had made new law in Prince George's County. And, we probably had, actually, made new law in Prince George's, and we were very proud of ourselves that we had reintroduced the concept of the fifth amendment to Prince George's County. And, so, we did have some opportunities to, you know, do some innovative things, but the more important lesson that the students took from that, I think, was, it doesn't matter what the client says, you have to start from there. You really have to; however incredible it might seem, it might actually be what happened. And, if you pursue it and you find that it is what happened, then, good things might actually come of that. If you don't pursue it you'll never know. And, if you pursue it and it's not what happened, then you take that conversation with the client to a new level by the source, you know, by the results of your investigation. But, you have to investigate. You have to go forward. And, it was a really quite remarkable moment for them from that perspective; that they couldn't just sit on their hands and dismiss the client's story as obviously false because it was obviously true as incredible as it was. It turned out to be absolutely right.

HALL: Well, let me ask you. When you got back to; what year did you go to work in Maryland?

CZAPANSKIY: In 1983; January of 1983.

HALL: Did the notion of creating law, when the opportunity presented itself, was that

now a sort of central idea that you had with you when you first arrived at Maryland or did it evolve after you got back to teaching?

CZAPANSKIY: Well, at that point I had been doing Freedom of Information Act work for five years. And, it was very clear to me that lawyers are the ones who make law. And, I had all these examples of the arguments that we had created, that had taken that statute in different directions; the statute of changes that we had proposed; how the legislative history of the statute as it existed developed, all of those things made it abundantly clear to me that the image of lawyering that I had been fed in law school had nothing to do with what lawyers really do. And, that students had to have that as part of their; their activity. And, also, it was just also very clear to me that if you have students do one case at a time, what ends up happening is they get a; they get such a narrow slice of the life of the client that they don't really understand the world that the client lives in. And, they also don't have much empathy for the life that the client lives. And, I thought that was; that was an awfully good way to teach them to disrespect poor people, ultimately; to give them one case experience at a time. And, it was also very inconvenient for our client. You know, our clients could come to us for a protection order, for example. But, then we had to send them to somebody else for their divorce, and then somebody else if there was a criminal case, and somebody else if they; so, sort of by chance I was handed an opportunity to get involved in a domestic violence case that was very young in the sense that the client had come to one of my colleagues when she'd been

accused of an assault on her husband. No divorce had yet been filed; there hadn't been any custody matters; there hadn't been any child support matters; whatever hadn't yet happened. And, for the next ten years I represented that woman with my students, starting in the successful criminal defense, then the child custody and the child support, eventually the divorce case, the custody challenges, the child support enforcements, all of the things that had to happen; learned just an enormous amount from that experience that fed into everything that I later did about understanding what the courts were about in the domestic violence situations; that people found themselves in.

HALL: This is a question more for my own understanding. When you went to Maryland was this an existing program you were taking over or were you being asked to initiate a program from the ground up?

CZAPANSKIY: When I first went to Maryland I was stepping into the shoes of a faculty member who was visiting somewhere else. So, I went into a general civil practice clinic. And, that was the; I stayed in that kind of a format, in the general civil practice of law for awhile. When this case came in it was at the same time that one of; a recent graduate from Maryland approached me about helping her develop a domestic violence clinic locally. Not part of the law school, but a public interest law practice at our local House of Ruth. And, I; she needed me to be on their board of directors. So, I joined that board, and so, I was continuing to do this general civil practice but I had this one domestic

violence case and this connection to a domestic violence practice that was developing. And, so, eventually, that all sort of came together. Now, we didn't have at Maryland at that time, and we still pretty much try not to have specialized sub clinics. We have a clinical law program. Faculty members can specialize in different things and I ended up specializing in domestic violence and to some degree, family law, taking most of my referrals from this domestic violence legal clinic that I helped to found outside the law school.

HALL: Tell me, just anything you can, about the early years of this; this specialty as it developed in full. Tell me, you know, about the, if you don't mind, about this specific original domestic violence case and just how did things sort of go from that one seed to what it became?

CZAPANSKIY: Well, that; that; when that case first came in I hadn't done any criminal defense work in quite a while at that point. She'd been accused of assaulting her husband with a knife. She had inflicted a fairly substantial wound on him. Her account was that he was attacking her at the time. They were in the kitchen; an account that one hears in so many of these cases, he was holding her by the hair and banging her head against the refrigerator. Since then, I've probably read 150 cases in which that exact scenario has occurred. And, met dozens of women to whom it has actually happened. But, she was the first one and she was in the kitchen, of course, reaches out, there's a big knife. She picked it up, put it in his back and hit his kidneys; one of his kidneys, which of course

floored him. He filed assault charges. She didn't.

**Side B of Tape**

CZAPANSKIY: I'm trying to remember how we actually did that. I know we got it dismissed.

And, now I don't remember exactly how it got dismissed. He was represented in the civil matter by a lawyer that his union provided, who was pretty aggressive on his behalf. And, my recollection is that the negotiation; that the criminal case had something to do with what he thought was going to be the then-coming civil matter. But, I don't really remember exactly how we got it dismissed, but we did get it dismissed. So, she was off the hook on the criminal matter. They were separated at that point. She needed; desperately needed a protection order which we could get under the old statute but it wasn't very satisfactory for a variety of reasons. One of which was, it didn't assure her child support. So, we had to go back in for child support. That took us almost a year to get her child support order. And, this was when I started to begin to understand the relationship between domestic violence and all of the other bad things that happen in family law, and came to the conclusion that almost no custody fight is; no real custody fight that goes on for any length of time begins in a situation where there hasn't been some kind of domestic violence. And, that the custody fight is really about power. It's really not about the kid if it's taken to any length. He eventually fought for custody, but first, we got this child support order, which he wasn't paying. So, we filed a; I; my students and I investigated the law and worked at it for, you know, with great seriousness, and came to the conclusion that we could get his earnings

garnished. All we had to do was file a motion. We could go in and get his earnings garnished. One way that the local practice was that first you had to have him held in contempt and only if he violated the contempt order could you get an earnings withholding or garnishment imposed. Well, of course, in normal civil law, somebody owes a debt, you don't have to get them held in contempt first. You get garnishment. So, I didn't think that it was all that unusual to think we could get garnishments. So, I moved for garnishment. I didn't move for contempt, and the judge turned me down on the basis that you have to go for contempt first. And, I said, the rules don't say that. And, further; and this was over the summer so the students weren't around, so I had to argue it; the rules don't say that and furthermore, I don't care if he's in contempt. I care if my client can have food on the table for herself and her six-year-old child. The judge said, don't worry about that. I'll talk to him and if he still doesn't pay then you come back with a motion for contempt. So, the judge talked to him. And, of course, all that meant was that six months later nothing had been paid and we finally got our motion for contempt heard and granted and the garnishment followed six months after that because once he was in contempt you couldn't garnish until he violated the order that was entered as part of the contempt. Totally bizarre system, which was both, in form and in substance, tilted so heavily against this woman who's just trying to feed her kid, that it became, you know, a real lesson to me in how family law power relates to people's real lives and made me start worrying about discretion versus non-discretionary judging and child support guide lines and all kinds of

other things that I then went on to work on and write about because it was so clear to me that she could just not get the money. A lot of our subsequent proceedings were about how she couldn't get the money that he owed her for child support. But, eventually the divorce case came on for trial. And, this was another whole set of learning experiences. Fortunately, not at her expense. Fortunately, we got what she needed but I learned a huge amount. She and he owned a house together. The house had been his mother's house. He had inherited a share of the house and his siblings had each inherited a share of the house, all of which they had turned over to them; to the couple, not to him, but to them. So, a large portion of the house was owned by them. This one little portion was owned by him. And, when he had left the house he had not paid any mortgage payments. He hadn't fixed the roof. He hadn't done anything; by that time, for five years. So, our theory was, he gets to walk away from the marriage with a pension. She gets to walk away from the marriage with the house, free and clear. Economically, it made sense. Under the Maryland, at that point, equitable distribution statute, it made sense. I was prepared to argue that because of default she should even get a bigger percentage than 50%. My students and I wrote memoranda to that effect. They were pretty persuasive, I thought. The judge sends us out in the hall to negotiate with a batterer who has not been willing to move on anything for five years. I protested. The judge would not allow us to present testimony. We had to go negotiate because that's what's good for families. Negotiation is what keeps families alive. This is a; I'm sorry Judge, this is a man who has been trying to kill her for ten years. No.

Negotiation is what keeps families alive. We go out in the hall. We negotiate. His lawyer beats him up over the head basically and says, they're letting you have your pension free and clear. All they want is the house. Sign over the house. Eventually, because the guy knew he couldn't afford legal representation any other way, he signed over the house. But, insisted on a clause that our client couldn't sale the house except to their son, which eventually became a problem when she wanted a mortgage later on. So, he kept control and the judge let him do it. And, she was entitled to that house free and clear. We couldn't get our case heard. By the time, you know, would have taken the damn thing on appeal and gone back, I mean, it was just; it would have been another ten years and she still wouldn't have gotten the house. In the mean time she couldn't afford to fix the roof, so she took it. And, it was, you know, again, one of those incredibly painful lessons. A year or two after that when we had him in court again for child support non-payment a judge finally said to him, enough is enough. We're taking your bank account. We're garnishing your wages. We're doing this. We're doing that. We're doing the other thing. You lose. She wins. She needs the money and you owe it to her. You're going to pay it. Finally, things started; by that time we were well into year eight, I think, in that case before a judge ever said to him, you just done wrong and now you're going to pay for it.

HALL: Karen, let me ask you, coming back to this notion you had of creating new law or at least evaluating, critiquing; how does the actual law play

\_\_\_\_\_ with fairness.

CZAPANSKIY: Right.

HALL: How much do that enter into your discussion with your students as this case kept being introduced to one class after another, after another?

CZAPANSKIY: Oh yeah. All the time. All the time. At the same time I was; I had become the reporter for, the co-reporter actually, for the special joint committee and gender bias in the courts and so I was seeing state-wide what was going on in domestic violence and my students read that chapter every year, every semester, actually. As I got new students they all read that chapter about how domestic violence plays itself out in the judicial system as shown in the evidence that we got; that we accumulated for that commission. They saw it in the case. We handled a bunch of different cases simultaneously and so we kind; we were looking for the similarities among them. We were trying to design advocacy strategies that somehow took into account judicial attitudes about domestic violence, about gender, about race. Sometimes race would play into these things; about finances, about parent-child relationships, about father-son relationships, mother-daughter relationships. We became pretty adept identifying perspective problems, as well as identifying, you know, which are the procedural barriers to getting justice, as well as some of the formal barriers in the way the statutes or the case law was playing out.

HALL: I want to ask one question almost from an educational perspective. Last person we talked to focused heavily on simulations. This obviously is un-simulated as it gets.

CZAPANSKIY: Right.

HALL: This case that keeps going on. In terms of the impact of what students draw from the kind of experience you went through, what kind of power do you think your experience had versus, say, a simulation about some of these same issues?

CZAPANSKIY: Well, I mean, I do simulations. I don't currently do simulations but I've done; well, that's not true. I do simulations. Simulations have, I think, an important place in teaching certain; certain things, but maybe it's just a matter of my imagination being flawed. I don't know. I can't make up situations like what really happens. So, that's a limitation. But, another, I think, much more important limitation, is students challenge themselves more; probe the system more, I think, when they are engaged with a real human being. They report that back to me every year. My first-year students sometimes have the unfortunate experience of not getting an individual case to work on because it just doesn't pan out for some reason or another that everybody gets one and they never come to the same understanding about the impact of poverty on people's lives; that the one's who's had the cases get. Even though we do rounds, we try to

bring as much of the case material into the class room as we can. Students do outreach. They meet people. Unless they've actually had the work of sitting down, one-on-one, learning about a person's life, maybe visiting their home, meeting their kids, negotiating with their case worker or with their opposing counsel or whatever situation they're in, reading the records about them, finding out that they haven't always told them the truth and going back and taking that relationship to the next level; whatever it is; negotiating with their clients, studying their, their client's records. It brings them to a different level of awareness, a different level of questioning that I've ever been able to do at a simulation. And, I wish I could do it with simulations because it could make things a lot faster but; and predictable, but I can't. I can't get them. Some of it is responsibility. Some of it is just people are very good teachers about their lives and I've not had that life. I live a very privileged life. I can't; students, I think, are quite rightfully skeptical about me being able to say much about the experiences of people who are poor. It isn't my state. Never has been. People who live in inner-city Baltimore. People who are black. You know, that's not my state. Never has been. So, I can transmit some of that life experience through simulation but I can't be as genuine; I can't be as thorough; I can't be as accurate. And, they don't have as much empathy for me in that role. Or, for anybody else I'd put in that role who's not real. So, I think that's a big piece of it. And, just being responsible for how somebody else is going to get the bread to put on the table. Just is all level up of motivation. I think there's another piece of it which is simulation; our students are Reagan babies now. They're

people who were born and raised in a much more conservative political era that is not only conservative in terms of; well, it's not just conservative, it's punitive when it comes to poor people. I mean, a lot of these students really believe that poor people are poor because, and solely because, of their personal characteristics. It has nothing to do with the society in which they live, the bureaucracy with which they have to; nothing; the employers; none of that makes a difference. What makes a difference is, they're just not trying hard enough. They're jobs out there. They're just not getting them. And, cutting through that is really difficult until they meet somebody who's trying to live that life. And, that really does have something of a transformative experience for them. So, I think it depends what your goals are. If you're trying to teach them a little bit about how to do a direct examination, I still prefer real clients, but I can deal with that in simulation. I think real clients are much more likely to insist that you tell their real story. And, they think that makes a difference in how you prepare a direct. But, one, what I'm trying to get them to understand is that the law has an impact on people's lives and that they, as lawyers, can fall into doing that badly or doing; or they can raise themselves into doing it well. They need real experiences. Just to get the motivation to even think about it.

HALL: I want to ask you in one question about the class – because I'm very fascinated about that, but is it your experience that as kids go through the full year of this kind of experience that they do begin to say there's some basic unfairness in the system? Do people sort of have their consciousness changed that way,

typically?

CZAPANSKIY: I only have them for one semester right now; have the first-year students for just one semester and I do a debriefing at the end of that first semester to see exactly that. And, just to give you an example, last spring when I did this debriefing we were talking about why was it that clients didn't get the welfare benefits; I'm doing mostly welfare work now. Why wasn't it that they weren't getting the welfare benefits that legally they were clearly entitled to? And, one of the students said, well, it's because they don't know about their rights and so they don't insist on them. And, another student said, well, no, that's not really the case because the client I worked with did know and did try to insist. And, the record was very clear about that. And, so, I said, so, what's your explanation of why it didn't happen; that she, you know, got the full benefit that she was entitled to? And, we played around with that for a long time. And, they; they talked about how case workers are prejudiced and how the system is broken and how sometimes case workers are just ignorant and they're barely supervised; they're not really prejudiced. And, finally, one of the students said, well, you know, the part I don't yet understand is why was it that they changed their mind the minute they got a phone call from me. I'm just a law student. Ding, ding, ding. All the lights started to go off. And, finally; and almost as a group they said, well, because lawyers have power. And, the whole group realized that that's in fact what it was. That we had power. Even first-year law students had more power than the 35-year-old mothers, workers,

who clearly had huge life experiences and a lot of sophistication. They didn't have power, but law; first-year, 22-year-old inexperienced law students had power, and could share that power and make things happen, but we were the ones with the power. And, these wonderful women that we had been working with all semester had none; literally had none in that part of their life. And, it was this amazing realization for them that that was what the semester had actually been about. Now, if they hadn't met those women I cannot imagine I could have gotten through to them about that. I could have gotten through to them about a lot of other stuff but I couldn't have gotten through to them about that. They really came away from an understanding that what being a lawyer is about is having social power and you can choose where that power gets used.

HALL: Karen, you started with the one domestic violence case. It's sounds like at that time you may not have necessarily realized what a broad pattern that one case represented.

CZAPANSKIY: Right. That's right.

HALL: My familiarity with that; the clemency case is cursory but at some point, clearly, you went from one isolated case to something where you could say there is a pattern here of women being prosecuted for essentially defending themselves.

CZAPANSKIY: Right.

HALL: How did you make that evolution?

CZAPANSKIY: Actually, I didn't do that alone.

HALL: Okay.

CZAPANSKIY: One of my colleagues, Mike Millemann, specializes in criminal defense and, or not specializes, exclusively in that, but does an enormous amount of that and does it at an extremely high level of expertise and quality, and he had been involved in several different cases where women had killed the men who were abusing them and had gotten very harsh convictions and sentences; long sentences. And, so, Mike asked me if I would like to work with him and a group of volunteers to try to find remedies on behalf of these women who were in prison. He'd actually been approached by the warden of the women's prison who said, you know, we've got a lot of women here who just don't belong here. They committed one violent act in their whole lives but the rest of their lives are exemplary and they've got life sentences. Can you help us get them out of here? And, so, Mike and I organized a group of students and eventually a public interest group in town also took up the cause and initially we took all of our; we investigated a bunch of cases that the warden had identified of women she thought didn't belong, quote, unquote, didn't belong there, as if

everybody else does, of course, belong in prison. But, she'd identified a bunch; she was particularly concerned about. And, we prepared petitions to the parole commission on behalf of all the ones who we thought we could maybe do something. And, we researched the case law that was at that point developing through the good offices of Liz Schneider, Holly McGuigan, you know, all the people whose names you associate with the battered women's syndrome defense, and tried to figure out were any of these women people who would have been able to take advantage of expert testimony if they had had lawyers who had offered that possibility at the time. And, we found several. We took their cases to the parole commission. I think we had one or two successes at that point but we weren't getting very far very fast. So, then, we decided to seek clemency petitions; to do a group clemency petition. So, the House of Ruth worked on it. The public justice center worked on it. My students and I worked on it. We had different clients and developed this book of about 350 pages of case histories on behalf of these women and over time, either through the parole commission or through the clemency process, all but one of the women was released.

HALL: How many cases are involved here?

CZAPANSKIY: I think there were twelve. I didn't do all of them but

HALL: Tell me about the actual work you and your students did. Was it advocacy or

what?

CZAPANSKIY: It was mostly fact-based work. We; both we and the lawyers in the community who were working on this. We didn't do it alone. Interviewed, re-interviewed, re-re-interviewed the clients; dug their cases; their case files out of the archives, interviewed any witnesses who we could find; reconstructed the cases, talked to expert witnesses. Some of them; some of the women were interviewed by therapists or psychologists, if I recall this correctly. And, then, we wrote it all up. You know, what did we learn about these women? How could we frame their cases in such a way that we could explain why they had committed the killings that they had committed. None of them denied having killed somebody. The issue was what were the circumstances of their lives that had taken them to that place? And, just; Holly McGuigan article came out a little while later about how the battered women's syndrome was often used in cases where actual self-defense should have been allowed. And, in fact, we found a couple of cases like that where there were actually had been a good case for self-defense that hadn't been asserted, probably because the lawyer didn't investigate it but also, just as likely, because the lawyer might have investigated it and decided, who is going to believe a battered woman? Who's going to believe a woman? And, that lawyer was probably right. That that was where the courts were at that time. And, subsequent to that, there was this commission on gender-bias in the courts in the state of Maryland. There was an awful lot of follow-up training of judges and lawyers about domestic

violence, about women witnesses and credibility issues based on what we learned in the state of Maryland through this gender-bias committee. And, we did a follow-up study later which indicated that at least when they knew they were being watched the judges knew how to behave as if everybody in the courtroom was of equal credibility and equal value. There weren't any overt cases of gendered-conduct coming from the bench during the day that we came in to observe them. But, that hadn't happened at the time these women's cases were being heard in the courts initially. So, Governor Schaefer actually took this whole process pretty seriously. And, the one case where he did not grant clemency was a case where the woman had the poor judgment to marry a man who was a police officer. And, you don't, as any; no governor happily releases somebody who's been convicted of killing a police officer, even in a completely private circumstance of a marital dispute.

HALL: Were you or your students at all involved with any of the actual presentation as to Governor Schaefer; the lobbying aspect of it?

CZAPANSKIY: I was involved in the lobbying a little bit but mostly he took the written papers; he considered most of the written papers.

HALL: Would you consider that the most influential or the most greatest success of a sort of public interest case you've been involved in or are there others?

CZAPANSKIY: Oh, well, my role in that was only, you know, sort of one of a group. No, actually, I think probably that one of the very most significant things that my students and I have done is the Medicaid case that we did year before last. This was with first-year students. Part of our welfare project is reaching out to community groups where people are in welfare-to-work activities and talking to them about what their experiences are and finding out what's going on for them. And, one of the things we learned was that as people left welfare for work they were losing Medicaid coverage. And, one of the promises of welfare reform was that if you left welfare for work, for at least some period of time, your whole family would stay on Medicaid; that you didn't have to stay on welfare in order to stay on Medicaid. And, that was very, very significant. These women thought that was a huge loss. None of them had jobs where there was health insurance because poor people don't tend to get jobs where there is health insurance. And, so they and their children were going without very basic stuff. My colleague, Marla Hollandsworth, who was teaching with me at the time, was representing a woman whose granddaughter couldn't get infant well-baby care visits because the kid kept getting cut off of Medicaid. After, you know, his grandmother, whose case he was a part of, left welfare for work. So, and another one of our clients lost her job because of diabetes because she had been cut off of Medicaid and couldn't get her insulin. She couldn't get the routine stuff and so, she ended up with enormous health crises, one after another. So, we did an enormous amount of research with first-year students into; Marla and I were not Medicaid lawyers. We knew the welfare system

pretty well. We didn't know squat about Medicaid. First-year students; we investigated what was the federal law; what was the state law? What did these enrollment numbers that the state kept giving us actually mean in terms of who was covered and who wasn't? And, what were people experiencing? And, we put together a law suit, class action law suit on behalf of all of these thousands and thousands of people who were getting the first three and a half years of welfare reform had been cut off from Medicaid. And, we threatened to file it. We wrote several demand letters to the state. The state kept saying, you've got it all wrong. You don't understand the numbers. You don't understand the law. We haven't cut anybody off. Everybody's entitled to Medicaid is getting Medicaid. The numbers were not computing, so we just couldn't, couldn't buy that. We told them we were going to file suit on the first of April. The twentieth of March we get a phone call; would you like to come to a meeting with the secretaries? Secretary of Health and Mental Hygiene, secretary of Human Resources sat down with us and we could bring with us only about three of the students, unfortunately, of the twelve who were working on the case; two of the students of the twelve who were working on the case. And, the secretaries brought this, you know, panoply of experts. They were all going to prove to us. And, finally, the secretaries looked at each other; we talked about it for quite a while and finally the secretaries looked at each other and said, well, what do you want? And, we said reinstate everybody who's been cut off. Make sure this doesn't happen to anybody else. That's what we want. You can avoid this law suit if you do that. Over the course of the next; the secretaries

basically; this is very cute. The secretary of the Department of Health and Mental Hygiene said to the secretary of Human Resources, well, you can make sure nobody gets cut off from now on because your department has responsibility for processing. So, we can just; we can take care of that part, right? We; you can take care of that part. And, she turned to him and said, well, you know, your department can make sure that all those people who need to be reinstated get identified and get reinstated. So, we can take care of that part, can't we? It was very cute. Clearly, they had never talked to each other about it. It was appalling. But, over the course of the next sixty days we actually came to a settlement that reinstated Medicaid for 60,000 people and offered another 60,000 an abbreviated application process for getting Medicaid. And, that instituted a process through which illegal denials and terminations of Medicaid would come to a halt, which, in fact, did bring illegal denials of Medicaid and illegal terminations for Medicaid to a halt. And, so, over the course of the next twelve months another 30,000 people did not lose their Medicaid because of this threatened law suit, which we ended up never having to file because we got pretty much, not everything we wanted, but we got pretty close to everything we wanted out of this threatened law suit, which we did with first-year students. We; and by the end of the semester when we did this round-robin debriefing their conclusion was that what lawyers really needed to be very, very careful about and attentive to, is the law in the books is not what it looks like in real life. They really began to understand that unless you use lawyering power, it doesn't matter a whole lot what gets written down because

that's not what happens if it isn't what the bureaucrats want to make happen.

HALL: Karen, in both these cases, I understand there were many groups involved in the clemency case. It seemed more like this is closer to your efforts with the Medicaid case.

CZAPANSKIY: This was, yeah.

HALL: Students who get involved, they come into a clinic and suddenly they're working on a case like this and then stick around long enough to see the final result, you know, women getting clemency in the one case, women getting reinstated or kept on Medicaid in the other case, what's the impact on one of your kids when they've been a part of that?

CZAPANSKIY: I think they; some of them, no impact at all, of course. You know, some of them go on with their lives. Some of them, actually, come to the very negative conclusion that it's really hard work being a public interest lawyer and not a whole lot of fun and so they don't ever want to do it. But, some of them come to the conclusion that the power that they have makes a difference and that they want to use it to make a difference. One of my former students who's now a lobbyist for catholic charities and has a wonderful handle on why it is that she wants to be doing that and what she expects to achieve in her life because of that. And, she had an opportunity, in fact, was with one of the big law firms in

town and just didn't; didn't get to her heart. And, she knew law didn't have to be like that. It could be something that gets to your heart. Another one of my law students has his own little, very small private practice in a town in Maryland where he represents women in domestic cases because he learned from our clinical work together that it's incredibly difficult to get lawyers who are willing to really pay attention to them in the ways they needed and he wanted to make that a part of his practice. So, you know, and I've got a couple of wonderful students who work for labor unions. But, a lot of these students, even if they're not doing something in particular right at any particular moment in their career, about public interest, you know, what I consider public interest or social justice work, are ready to be tapped. I went to the wedding of a couple of my students last spring and we were in the middle of another part of our welfare advocacy work which I thought was going to result in a very difficult law suit, that I wasn't able to accumulate, assemble resources to do. Half of the students of that group came up to me and said, I heard you're going to look for somebody. I want that case. Send it to me. I want that case. And, that is very, very exciting. It was more fun times I've had as a, you know, as a law teacher is to have, you know, twelve of my twenty-four students in that section want that case and willing to fight in their law firms for the right to take that case. Now, we ended up not having to place it. The state caved but it was; it was pretty darned exciting that even though they're in private practice and making tons of money and doing very well, they still know that their power is meaningful and useful. And, that's a hell of a lesson to leave them with.

HALL: Just a last few questions. It seems like you feel like clinical education should have a heavy social of justice kind of overlay. From your perspective, why is that, versus just using the clinical method to teach other kinds of law?

CZAPANSKIY: Well, I can't say for me it's an either or proposition. When I teach family law I try to bring in to that what it is to be a lawyer in family-law matters. My students have to actually go out and interview a family-law practitioner and it can be somebody who sees their entire job as just representing clients. It doesn't have to be somebody who sees their work as being social justice work and then when they, after they've done those interviews they also have to do a court observation. They have to bring that back into class and talk about it, you know, so, what it, the lawyer you spoke to say about divorce law. You know, is this a good way that we do things or not a good way that we do things? And, you know, what was that person's sense of how their client's respond to this part of the law? So, I think part of what the clinical method does is it helps students relate to themselves as lawyers. And, that has got to then give us as law professors a motivation to relate what we do to them as lawyers, not just as students of some graduate school but as lawyers in the making. And, I just think that as a profession we owe that to them as incipient professionals and also to their clients and to society that they have some sense of what it is to be a lawyer. And, also, you know, like I was saying earlier, to have some sense of what it means to think about law creatively because that's what common-law lawyers do. That's what legislating lawyers do. That's what lawyers; big role

that lawyers play in our society is to be actively shaping the law. Now, of course, I would prefer that those of my students who actively shape the law shape it in directions that I'm going to be happy about. Not all of them do and so it seems to me that when we are going to the next step of actually engaging students in doing law practice we ought to be shaping those experiences around the people who most need lawyering power to be used on their behalf. And, so, I want students to know more about what it is to be active and creative lawyers but when they actually do it under my supervision I don't want to waste my time spend, you know, giving resources to people who can get resources in other ways; lawyering resources or social power resources in other ways than using me and my students. So, I make my choices about where my time and effort, I think, is best spent and my students get dragged along, sometimes over their protests, to my agenda. And, I explain to them at the beginning of the semester, you know, this one is my agenda, this is why it's my agenda. I don't expect you to adopt it as your agenda for life. I hope you will give me the benefit of suspension of disbelief for the next fourteen weeks. That maybe I have something to teach you about being a lawyer, and the kind of lawyer I want you to be is the ketchup lawyer. The ketchup lawyer is the guy who got written up in the Washington Post a number of years ago. He represents the Ketchup Association. You never see this man anywhere when he doesn't have a spot of ketchup somewhere on his clothes, usually on his tie. Everywhere he is, he is the ketchup lawyer. He litigates on behalf of the ketchup industry. He probably planted the idea for the ketchup commercials in Garrison Keeler's

brain. He does executive branch advocacy, probably got the Reagan administration to think about ketchup as a vegetable. He does everything about ketchup. He's devoted to the because of improving the consumption, increasing the consumption of ketchup on behalf of his clients. And, when there is a barrier to ketchup that hurts his clients he makes sure that their needs are represented in wherever that happens to be. That's the lawyer that they get an opportunity to be during that one semester for fourteen weeks. Then they can decide do they like it; don't they like it. And, this is the issue around which we're going to be ketchup lawyers this semester. You don't have to make that issue your own. You don't have to buy my approach to that issue. You don't even have to buy my analysis. But, that's the example. That's the hot-house we're going to use and you come to your own conclusions at the end of it.

HALL: You had mentioned early on that, and I think it's true even within the clinical field, that there're very few women; that you felt quite alone even as a woman law student way back when. Sandy tells me now that maybe half of the clinical instructors are women now. What's your thought on terms of how that's actually changed or has it changed the way clinical education is done, even in term of just emphasis?

CZAPANSKIY: It's a really good question. I mean, I think; when I think about why we were all doing criminal; why so many of us were doing criminal defense in the mid-

seventies I wouldn't be surprised if that's because at that point and time it was considered a very macho thing to do. Certainly, Bill Greenhalgh and Andy Goman, who do criminal defense clinic work at Georgetown did it in a very macho kind of way. And, so one of the things that has changed is people like Holly McGuigan do criminal defense, they do it with a sense about what the impact is on women's lives. They ask the women-question. Big, big difference. We wouldn't know very much about the defense of women in criminal; the defense of women in domestic violence cases, but for Liz Schneider and Holly McGuigan paying attention to those issues. So, to some degree, having more women in clinical education is like having more women in legal education, generally. We ask the women-question now we didn't ask thirty years ago, twenty-five years ago. The other piece of it is that the same time they've been more white women coming into legal education and clinical education. They've been a lot more women of color coming into clinical education and legal education and we've had a lot more attention paid to what it means to be a person who has little power in the social environment, including in the teaching environment. And making that very overt in some of the literature I think about some of the work that Michelle Jacobs has done that's been very influential around examining what it is to be a teacher. When you're a woman and when you're a woman of color. Those are issues that were not being talked about in the mid seventies. They just weren't on the table. Even in the mid seventies we were talking about empowerment and I think that's one of the things that made clinical education comfortable for women.

You know, the notion that we were talking about focusing on individual students, their empowerment, their development, individual clients, their empowerment, their development made it an attractive field for women; an attractive way to use our access to power. Because, in a way, it's a very nurturing kind of teaching, as opposed to a Socratic method, which can be nurturing, but can also be very destructive, particularly when it's used in a large classroom environment as opposed to a one-on-one kind of conversation that Socrates actually tried to engage in with people where it was a nurturing; a brain-nurturing kind of conversation. So, I think that clinical education has been a welcoming place for women to enter legal education. It's also sometimes proved itself to be something that it's very hard to get out of. It's extremely time-consuming and difficult teaching; very under-appreciated like all mothering is and all parenting is. I mean, I think good clinical teachers, whichever their sex, you know, do a lot of parenting of their students. And, good parenting is not very highly valued in the academy or outside the academy. So, the result of that has been, I think, that there's been some extremely painful tenure and status decisions that have, you know, where a lot of women have lost. A lot of men have as well, but I think that a lot of that pain has fallen very heavily on the women. And, that's been remedied to some degree by a lot of the status work that Elliott, you know, has done a lot about, as well as many others that paid attention to the second-class status of clinicians. And, we need to do more of that without taking away from, and this is the tricky part, the social justice mission. Because when you become a

regular stand-up member of the academy it's real hard to keep; to keep alive the social justice commitment.

HALL: Okay, last couple questions. One is very specific. You mentioned a name that has come up from time-to-time. I'd just like –

CZAPANSKIY: I don't have a lot of direct experience with Bill.

HALL: Okay. You mentioned that he sort of took a macho approach to things.

CZAPANSKIY: Yeah, yeah.

HALL: I was just wondering what gave rise to that observation?

CZAPANSKIY: He had a clinic at Georgetown that; when I was there, I think, was mostly graduate students and that was just; that was very much the impression was that women were not terribly welcome to apply. Although, there were some women in the program.

HALL: In that case what do you see as the remedy to the second-class citizenship because that's the thing that virtually everybody has talked about in one way or another?

CZAPANSKIY: I'm not really sure because for me that question gets very complicated into what clinics need to be doing throughout legal education. And, so, I'd like to see all of our faculty members be more lawyers not just clinicians. As much as I would also like to see clinicians continue to be developing as they've been so much as really interesting and innovative scholars. So, I think that we need to be interrogating what non-clinical faculty do about lawyering as much as we need to be interrogating what clinical people do about scholarship. I see that; I really see a need for us doing more integration. And, that would, of course, help resolve some of the second-class issues, but it's a very long and slow and painful process.

HALL: Karen, my final question is actually kind of two questions rolled into one. Given your experience, what do you think has been the greatest achievements of clinical education overall and where do you hope to see it go over the next, you know, ten, fifteen years?

CZAPANSKIY: Well, well, I'd have to say that among the greatest achievements are opening the door to students experiencing and faculty having conversations about the social justice mission of law and law schools. That this wasn't happening prior to 1971, 72, whenever CLEPR started. And, that's a huge, huge contribution. The pro bono project that Elliott Milstein has going on right now in the AALS is sort of a natural outgrowth of that, but not without an enormous amount of path-breaking work that had to be done to make law schools say out loud, yes,

social justice is a mission of ours; not just teaching college students how to pass the bar exam or whatever else we think we're doing. Where it's going is I suspect law schools clinics will continue to be upper-level courses, not pervasive throughout the curriculum. I – it appears that there's a lot of interesting work being done on new kinds of lawyering, like community development work in clinics that's very interesting. I think clinicians will continue to develop the scholarship. I would like to see clinicians do more bridging between the academy and the practice out loud when they do a lot of that. But, it doesn't get credited in the academy and it doesn't always get credited in the profession either. I'd like that to be a more of an overt activity and presence of clinicians in the society. Clinicians are moving into leadership roles throughout legal education, part because clinical work develops and amplifies whatever administrative talents you may have had you definitely have to use them to be a good clinician. And, so, lots of people who are now Associate Deans, Deans, President of the AALS have clinical backgrounds and histories. So, I think that that may; that leadership role may have some transformative effect in legal education, but I can't figure out what it's going to be yet. Wish I could help you there, but I don't know.

HALL: Anything you'd like to add to my questions? Which brings to our universal last question. Over the six hundred and twelve questions I've asked what was the six hundred and thirteenth that I failed to ask here?

CZAPANSKIY: The six hundred and thirteenth that you failed to ask me?

HALL: Was there any just basic topic we just haven't covered that; that you'd like to have people chew on?

CZAPANSKIY: Two, I guess. One is; we touched on this very briefly, but we haven't really delved into it. I'm sure you're delving into it with others. As aging clinicians have more of this divide politically from younger students who are coming in with more conservative perspectives, what should we be doing about that? How do we reach them? How do we fail to reach them? The other question is what, if any, role can clinics be playing in addressing racial, the continuing racial struggles in this country? We're fortunate now to have more clinicians who are people of color and who are raising some of these issues. Environmental justice clinics come to mind but as this last election shows voting rights are still huge issue and not one that this government is likely to be addressing. And, with students; students very much come, I think, still come to law school really believing that most of this racist stuff is history and not present tense. And, it may well be that we'll find students in upper-level clinics who are still, never been disabused of that notion. But, if we don't make our services available to do some of the social justice work around democracy, then I think we were missing the boat on an extremely important issue where we could be making big contributions.

HALL: Are you thinking actually in terms of like, should there be law suits brought in some of these voting rights cases?

CZAPANSKIY: Well, there will be law suits brought. The question is whether clinics will have a role in engaging with any of those issues and if so, how do you structure that? How do you address that? And, how do you get through your student's reluctance, necessarily, you know, to get engaged with those large cases that would follow?

HALL: If I could ask you head-on, just how are the student's different today than when you first, let's say, came back to the University of Maryland or even back during your tenure at American?

CZAPANSKIY: Well, I guess, for one thing, they're a little bit younger. We had a lot of returning women in the mid 80s, particularly; and to some degree also in the mid 70s, we had a lot of women who were starting their graduate education late in life, who had been doing other things and who were very interested in law students because they brought a lot of life history with them to law school. And, most of the students today are maybe out one or two, three years, but; so, the average age of the class is going up, but we don't have some of these really; we don't have as many of these very mature students, who really season the class in different ways. We have as many women as we have men, typically. And, the women are no longer exceptional. They are wonderful, but they're no

different from the guys. When women were going to law school in the '70s and even into the early '80s oftentimes we didn't get admitted into law school on the same credentials. I know the women in my class did not get admitted on the same credentials. We had far higher credentials than the average; than the men in our class. And, our motivation levels were very high because we knew they had to be if we were going to survive in that environment. The women today are much more assuming that they belong there, which is great, but it also means they don't identify with women's issues in exactly the same way because their experiences have so far been fairly non-restrictive, which is great. The other thing they often bring is a lot of the women have now been sports team players, which is a series of wonderful attributes that they bring in. They know how to work in groups and that was not true of my students in the 70s, even into the late '80s. I wasn't getting post-Title IX students, been a real charge to get a lot more women who have a real strong sense of themselves as individuals, as strong people, as team players, as well. They're conservative politically very often. They're very, very few who have thought through and not unexpected, who thought through their politics and the consequences of their politics. Welfare reform is a really great issue for bringing all that out because it really brings to light individualism versus communal responsibility for families and children. And, they don't think there is a communal responsibility usually. We had a discussion during the development of the Medicaid case about whether the theme of the case should be government has done something wrong or people deserve medical treatment. Not one of my

students thought it would be persuasive to argue that people deserve medical treatment. If the government hadn't done something wrong they didn't want to bring this case. So, they learned that the government had indeed done something wrong. But, if they hadn't been persuaded of that, forget it. And, I thought that was a very key distinction because Marla \_\_\_\_\_, with my colleague in the case and I were both sixties babies and we thought the important thing was, people are entitled to medical care. It wasn't the case. So, there's this very large divide in where we come from politically about a lot of these issues. There's also, you know, a lot of neglect of race. A lot of assumptions that people get what they deserve and that racism doesn't have anything to say about it and that gender has nothing much to say about it. The parenting has nothing much to say about it and people just get what they deserve. Which feels to me a lot like the 50s and not very much like the 60s or even the 70s.