

**Transcription of the Oral History with  
Philip Schrag  
January 5, 2001**

Schrag: I spent my first three years after law school at the NAACP Legal Defense Fund doing test case litigation, and particularly starting up the Fund's consumer protection litigation. And then I spent a year – that consumer protection work brought me to the attention of Mayor Lindsay, who appointed me the chairman of the Consumer's Advisory Council of New York City. And in that capacity my council wrote a model law for New York City to pass to protect consumers. New York City then passed the law. And about that same time Bess Meyerson became the commissioner for Consumer Affairs, and she asked me to leave the Fund and become the first administrator of the law, the first consumer advocate of the city of New York. So I did that for a year. And after that year I started clinical teaching.

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Hall: Actually, if I could ask – obviously you don't just go work for the NAACP in a vacuum – what were some of the things that were going on in your sort of “coming of age” and political awareness that made you go that route just as a first legal job?

Schrag: I was in law school at the height of the civil rights movement, started law school in 1964, finished in 1967. It was a period of tremendous political ferment and activism in the country, and the war in Vietnam was at its height. Many of us students were engaged in protests, either domestically in connection with the civil rights movement, or internationally in connection with the war. And many of us when we graduated from

0:02:00 law school were eager to do something professionally to work on the same movements we had worked on as protestors. So when I was a senior, my third year of law school, I read an article on the front page of the *New York Times* that said that the Ford Foundation had given a million dollars to the NAACP Legal Defense Fund to get into poverty law – not just strictly race cases, but cases involving economic issues. And this seemed perfect. It was obvious there were going to be more jobs created. There would be a possibility of working there. And the issues were going to be new. So it was a perfect job, and I applied for it and got the job.

Hall: During your time in law school, either formally or informally, did you do anything that would remotely resemble a clinical kind of experience?

Schrag: No, nothing at all.

Hall: Okay. Given, like you were saying, that it was obviously a time of tremendous ferment, did you and your fellow law students have any feelings about the legal education you  
0:03:00 were getting? Was there a sense that it was stale or sort of outdated in the way it was being delivered to you?

Schrag: Not really. I had really a wonderful experience. I was at Yale Law School, and the first day of law school – my Constitutional Law teacher was Charles Black – and on that first day he presented us with an issue as fresh as that day's headlines. What had happened

was that enough states had – but one – had their legislatures pass a call to create a new constitutional convention to completely revise the American Constitution. One of those states had then repealed its call. And Black was quite concerned that one more state might call for a new constitutional convention, throw open the whole question of whether we had a Bill of Rights or any other rights. And what was the status of the one state that had revoked its call? Could a state revoke a call for a constitutional convention? This was an issue on which constitutional law scholars were themselves divided and arguing and so forth. And he threw the question open to our class on its first day of law school. It gave us a sense, I think, that law school was as relevant and contemporary as that day's news. The next week, our very first serious, substantive discussion of constitutional law was one in which Black posed us this problem – which was kind of clinical in a way – he said, The Civil Rights Act of 1964 has just been passed. It's just gone into effect. And it's going to go to the Supreme Court for a test. There are three cases on their way up to the Supreme Court. In one case a person is suing to enforce the law. In one case a state is resisting the law, or something like that. And in the third case somebody is in jail for having been convicted of trespass, for violating a state's trespass law by sitting in at a lunch counter, and is using the law as a defense, even though the law was passed after the trespass occurred. Which of these three cases would you want to get to the Supreme Court first? This was an amazing question he asked us, right as we were beginning our study of law, because it was not a question of doctrine. It was a question of tactics. And I think in a way that first question has deeply influenced my thinking as a clinical teacher, because that's what we

think about in litigation all the time. And there was a right answer in a way. The right  
0:06:00 answer was the criminal trespass case, which was in fact *Hamm v. Rock Hill*, I think. I  
think it was the first case that reached the Court. And because it involved somebody  
who was in jail, it presented the Court with a stark issue. If the Court said that the  
statute was unconstitutional, this person would stay in jail. And that was what Black  
was driving at, and that was what we came out of the exercise with.

Hall: Tell me a little bit just about your time at Yale, any other sort of really formative  
experiences, things that helped shape you as a lawyer once you left the university.

Schrag: I think another extraordinary class I had at Yale was a course taught by Charles Reich,  
the author of *The Greening of America*. I took Criminal Law with him – the only time  
he taught Criminal Law in his career, the only semester he taught it. He was playing  
with it, experimenting, learning something about it along with us. He opened the course  
with the case of *The Queen v. Dudley and Stephens*, the lifeboat case in which three  
0:07:00 people were cast adrift in a lifeboat in the 1850s, I think, and two of them, starving, ate  
the third, and were tried for murder. We spent four weeks, twelve sessions on that case.  
And it was the first case in the course. A quarter of that course was devoted to that case.  
And I was very impressed not so much by the substance of what we were learning,  
which I can barely remember, but by Reich's willingness to take the time to devote so  
much of his course to one case and really plumb its depths. And that, too, is what we do  
in clinical legal education. We do whatever it takes to understand what we're working

on, even if it takes a very long time and requires a lot of work to study one case in great depth.

Hall: Phil, when you went to the NAACP – obviously this was your first experience as a practicing lawyer – in what ways did you feel grounded and ready to go, and in what ways did you not feel quite ready and had to sort of learn as you went along?

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Schrag: I had the classic, you know, mythical experience. I walked into the NAACP Legal Defense Fund on the day I was supposed to start work, and I sat down on the bench, waited for somebody to come find me and give me payroll slips to sign or something. And I sat there for an hour and started to feel that they'd forgotten I was supposed to show up for work. And finally somebody came and said yes indeed they were so busy that they had forgotten I started work that day. But in fact they really needed me because they had a Supreme Court brief to file in a month, and would I please write the Supreme Court brief? Here was a number to use to make telephone calls to anybody I wanted to. Here was an airline credit card. I could go any place I wanted. In one month I had to write this amicus brief for the Supreme Court, this Illinois Railroad Union case, First Amendment case. And I did it, and I felt very prepared to do that. Yale wasn't so good at teaching many things, the things we now teach in clinics, but it was very good at teaching you to write an appellate brief. We all came out of that experience thinking that that's what we could do. And that was what my first assignment was, so I did feel prepared for that.

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Later in my work at the Fund I started doing trial preparation work, pre-trial litigation in the consumer protection cases, and I felt much less prepared for that. Fortunately, there was a young lawyer at the Fund who had started a year before me and who knew a little bit about litigation in the pre-trial phases, and he took me under his wing. He was William Bennett Turner, who became a civil rights lawyer here in California where we're doing the taping, and he taught me how to do a deposition and other pre-trial work, and I'm very grateful to him for it.

Hall: Your actual decision to work for the NAACP, did that have any parallels among your classmates at Yale? Was public interest a strong direction people took?

Schrag: Here's the statistic that always stuck in my mind, because I've not seen anything like this before or since, but it's a reflection of the year 1967. There were 10 of us who were officers of the Yale Law Journal that year, and nine of the 10 went into public interest work. And you just don't see that happening these days. I hope it happens again sometime. And of the nine, many of us are still at it.

Hall: What are some of the highlights of your time at the NAACP? What cases were most memorable for you, and what other experiences stand out?

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Schrag: I wrote the brief in two U.S. Supreme Court cases in which we won and made a big difference. And I still think of those two cases as a couple of the most important things

that I've done in my life. One was *Snidach v. Family Finance Corporation*, which declared unconstitutional pre-judgment wage garnishment, which was a practice in effect in 22 states at the time. Under this practice, if you were paying on an installment plan and you missed a payment, the finance company that had financed your purchase could garnish your wages, get your employer to stop your wages or part of your wages, even before it won a lawsuit against you. And this put tremendous pressure on you as the buyer to settle a lawsuit and not have your day in court. The Supreme Court declared that unconstitutional, and instantly 22 state laws fell. That case also led to a series of other cases declaring unconstitutional other similar practices. The other case was *Newman v. Piggy Park*, which was a case of statutory interpretation involving the Civil Rights Act of 1964. The statute said that after a Title II public accommodations or Title VII fair employment case was over, the district court could award – “may award,” said the statute – counsel fees, attorneys’ fees to the prevailing side. Our client had lost a case – that is, the person charging discrimination had lost the case – and the court had awarded counsel fees against him to the restaurant. And we argued that the statute, although it said that the court may award counsel fees to either side, really meant that if the black or minority person or woman seeking an award based on discrimination won the case, the court should award counsel fees. But if the restaurant or alleged discriminator won the case, the court should not award counsel fees. And the theory that we used was the theory of a private attorney general, that the person enforcing the law was standing in the shoes of the attorney general of the United States trying to effectuate congressional policy, and that was why attorneys’ fees should be granted. But there was

no special policy in encouraging a restaurant to resist a discrimination suit. And the Supreme Court accepted that theory, and it's been used and applied in many other civil rights contexts since then. You won't find my name in the Supreme Court record of either case though, because I was less than three years out of law school at the time, and therefore my name could – I could not become a member of the Supreme Court Bar. And my name was expunged from the official records, although you'll find it on the brief in the Supreme Court files.

Hall: Phil, during your time at the Legal Defense Fund, by the time you left, had your sense of the powers and the limits of the law evolved, you know, just through the actual experience of being in some of these cases?

Schrag: I think by that time I still felt that it was possible to achieve justice in almost any case by taking it far enough. At that time, the Legal Defense Fund – this was just – I left just about the time Warren Burger became chief justice – the Warren Court was still in its heyday. And the NAACP Legal Defense Fund had at that point lost two U.S. Supreme Court cases in its history. The statistics are very different now. But at that time, we felt that if you could just get your case to the Supreme Court, everything would be okay.

Hall: Okay, what actually made you move from the Legal Defense Fund to working for the City of New York?



Schrag: As a piece of part-time work while I was at the Fund – I should go back – let me go back a step. The Fund, as part of its “expansioning” to anti-poverty work, took on several different other areas of work besides its traditional work in race relations. It took on housing work, welfare work, and it started to take on some consumer protection work of which the *Snidach* case was one piece. The consumer protection law was in its infancy, but the Kemer Commission had identified consumer problems as part of the reason for the Watts riots. And so the Fund began to work in this area, and consumer protection law is state law. So this took us into the state courts rather than into the federal courts. It didn’t matter very much which state courts we were in, because all the state laws were pretty bad. And so I started working in New York state where the Fund was located. It was less expensive litigating where we were, and not having to fly around the country to litigate in various state courts. And I started trying to reform New York state consumer protection law thinking that that would be something, if we could do that, that would be something of a beacon for other states. I handled a series of test cases trying to establish that one could obtain punitive damages for a pattern of fraud in consumer protection and in consumer contracts, trying to establish that one could bring class actions to redress mass wrongs in consumer transactions and so forth. I lost most of these cases, by the way, but that was a matter of years before that happened. And, in the meantime, I became something of an expert on New York state consumer protection law. So when Mayor Lindsay was creating a consumer advisory council to advise him as to what to do with consumer protection, or for consumer protection, he asked me to be chair of this council. And we first wrote a report denouncing a proposed uniform state law that we

helped to prevent being enacted in New York state, and then wrote a proposed model law for New York City, which was passed and is still on the books, and which is still the strongest consumer protection law in the country. Then, in 1970, the mayor asked me to join his administration as the consumer advocate of the City of New York, to begin enforcing this law. And the year I spent doing that was probably the most interesting year of my life, because every day I was making a precedent. This new law was completely new. I wrote the first 20 regulations or so to implement it and brought all of the original test cases to establish what it meant.

Hall: Briefly, what are some of the hallmarks of the law?

Schrag: The law allows the city to bring kind of a class action on behalf of all of its residents who have been victimized by fraud. It allows the commissioner of Consumer Affairs to issue regulations defining specific kinds of frauds and making them illegal. The city has subpoena power to investigate frauds. I became a special assistant corporation counsel so that I could go into court myself to enforce the law. I didn't have to depend on getting the law department of the city to agree to enforce it, we were able to hold public hearings – many different features that were quite wonderful.

Hall: It actually sounds like your early career you were on the equivalent of a roll. It sounds like there were a lot of things you took on where you were able to get a victory out of it, in essence. Were there any major frustrations or disappointments during this period?

Schrag: There was an extraordinary amount of frustration along the way. In fact, because these cases were all very difficult – and I actually lost most of the cases that I brought at the NAACP Legal Defense Fund in consumer protection. Although, ironically, I was able later to reverse many of those losses by getting legislation passed – somewhat more  
0:20:00 successful in the legislative arena than in the judicial arena, which has influenced my thinking about the law, and my teaching subsequently, I think. The frustrations were so great that I finally got fed up enough to write about them at length in an article in the NYU Law Review, my first law review article, which was called, “Bleakhouse 1968,” in Volume 44 of NYU. And it’s a very long article told in the first person – maybe one of the first examples of narrative scholarship. But it’s all in the first person, and it’s all about the day-to-day frustrations of motion practice and discovery work in the New York state courts, and how indifferent the judges were to try to bring about justice or participate in law reform at the time.

Hall: I read one of your other series of articles, the “Notes from a CLEPR Colony,” which  
0:21:00 seemed to take a similar kind of viewpoint – or not viewpoint, but you know, first-person approach to it. But what made you decide to write that article, and in that particular form?

Schrag: The CLEPR Colony article?

Hall: No, the first article.

Schrag: No, the first article. Well, it was really a desire to expose to public view, to allow people to witness what I could see about the bureaucratic response of the courts, rather than judges. The courts were overwhelmed in New York. A typical day's docket in the motion part of the Manhattan County court involved 250 cases. And there was no way that a single judge could actually decide 250 motions. So the motions were really decided by a bureaucratic group – not of the kind of clerks that we think of that federal judges hire, one-year-at-a-time clerks, but a professional corps of clerks who didn't really have a sense of the justice. In fact, they rarely read the pleadings, but resolved the cases without opinions, just issuing orders. This made it very difficult to achieve a sense of fairness. And I wanted to expose this to the legal community.

Hall: I imagine also it would have thwarted what you were trying to do, trying to enact actual changes in the way the law was being implemented.

Schrag: Oh, yes. The discovery motions, the responses to our discovery motions, were often denials of the information we were trying to get. And this made it very difficult for us to establish the kind of record we needed on which we would build the law reform. In addition, companies kept going bankrupt in the middle of our litigation, which made it very difficult to proceed with the case.

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Hall: Phil, before you move on to Columbia, is there anything else worth noting about the time you were working for the city and sort of implementing the Consumer Protection

Act?

Schrag: Well, in a way this whole oral history with me is redundant, because I've done so much first-person writing about this. But the year that the New York City Department of Consumer Affairs was written up I wrote up in a book called *Counsel for the Deceived* – it was my first book, which is probably in most law libraries. It's again a first-person account. And the thesis of the book is very disturbing. Again, we were dealing this time on behalf of the government, but in the same New York City courts. And the thesis of the book is that whenever we played fair and adopted the due process model of fair litigation we lost. We couldn't get to where we wanted to go to achieve relief for consumers. But whenever we did something more creative and didn't quite follow the model, use more self-help remedies such as exposing a defrauder in the press, we succeeded and saved vast amounts of money for consumers – very, very disturbing trend, and which I explored in that book.

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Hall: What ultimately led you to take the job at Columbia?

Schrag: I got a call one day while I was at the Department of Consumer Affairs from Mike Meltsner, who became my colleague in teaching and co-author on three books. Mike had been at Columbia at that point for about a year. He was Columbia's –he and Harold Rothwax were Columbia's first clinicians. And Michael said that he had begun this new kind of teaching called clinical teaching – this was the first I had heard of clinical

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teaching, I think – and that Harold Rothwax was being appointed a judge, and so there was a vacancy for the second position. Would I consider accepting this vacancy, or applying for this vacancy? It was, in some ways, something that I thought I wanted to push away, because the one thing I knew when I was in law school was that I didn't want to be a law teacher. I had no idea what I ultimately wanted to do with my legal degree, but I did not want to become a law teacher. It seemed too far removed from the social activism that I was drawn to. On the other hand, this clinical teaching idea seemed rather intriguing, because it seemed a way to have the best of many possible worlds. I could keep a strong hand in actual litigation, or so I thought, and at the same time I could write and think about the things I wanted to think about. And I'd already begun doing some writing for publication, both for popular press and for the academic press. And of course I'd have job security if I did well enough. Also, I had started doing a little teaching. In 1968, Bill Young, who taught Bankruptcy at Columbia, had asked me to give one guest lecture in his class. And I had lectured on some consumer protection aspects of financial transactions, and had enjoyed it a great deal. And the next year Bill had talked the faculty into suggesting that I teach a course as an adjunct in consumer protection. That course, which I taught for the first time in 1969 as an adjunct, was a wonderful experience. I had great students, four of whom I later hired when I was at the Department of Consumer Affairs as my first group of lawyers. And Marjorie McDiarmid was part of that group. She is now a clinical teacher at West Virginia. I had a great time working with these students. It was a professor at City University of New York named David Caplovitz who was a sociologist who had written

the famous book, *The Poor Pay More* – and David came and sat in on the course, and David and I and all the students went out for pizza after every class. So we bonded in a quite extraordinary way, spending hours eating and drinking after each class and really discussing issues in great depth. And it was a course unlike any other that I've taught since.

Hall: Yeah, I want to ask – you obviously had fond memories of your time at Yale, but had there been any experiences you had like that during your own time as a student where you had that kind of closeness, you know, with a professor, you know, sort of outside the classroom?

Schrag: I think there wasn't anything quite like that where we regularly connected in that way. But I did take a course with Fred Rodell at Yale in legal journalism that was a more intense course than the average course. We had to write an article every week in the style of a different kind of journalist for a different kind of publication, a popular article about the law. And Rodell was, for all his hard-edged style, he was a wonderfully supportive person. He took me in the course, despite the fact that he thought I didn't know how to write. And he gave two prizes each time he taught this course, a prize for the best writer and a prize for the most improved. My semester the best writer prize went to Jeff Greenfield, who now is a famous TV commentator – and I won the prize for most improved. And I think I did; my writing did improve a lot, because Fred's care and nurturing and the time he took with me to show me how to improve my writing.

Hall: During the time at Columbia – obviously of all the campuses in the country, that one was probably most famous for some of the arrests in the year the campus shut down. How did the climate of the campus affect your relations with the students, or the way the class unfolded?

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Schrag: I wasn't there in 1968 at the height of the unrest. I was adjuncting in 1970 at the time of the Cambodia bombing, but I was only there for an afternoon a week, so I didn't have – I could see that the campus was in the kind of agitation that we all read about in the newspaper, but I didn't have much to do with it myself. By the time I started full-time teaching in the fall of 1971, things had calmed down. That period was really over.

Hall: Do you have any sense as to whether there was any relationship between sort of the campus atmosphere and the formation of clinical programs, either direct or indirect?

Schrag: I think there was a lot of student demand for something more relevant in those days, and I think that helped persuade the faculty to accept – this was before my time – but to accept George Cooper, Professor George Cooper's suggestion that Columbia get on the bandwagon that other schools were getting on as a result of CLEPR's initiative in funding clinical legal education.

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Hall: And one last question of a detailed nature. Had you any prior history with Mike Meltsner before he called you?



Schrag: Yes. The reason I knew Mike is that he had -- he had been one of my supervisors at the Fund. Leroy Clark, who now teaches at Catholic Law School, and Mike, who had gone with me at Columbia and then became dean of Northeastern Law School, were my two co-supervisors. And they were I think called first assistant counsel. We had -- Jack Greenberg was the director counsel. Jim Nabrit was the deputy director counsel. Mike and Leroy were the additional supervisors. And so we had known each other quite well.

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Hall: You said that when he first called you you hadn't even really heard of the concept of clinical education. Tell me how you got up to speed and even sort of forming a game plan for what you were going to do once you were actually going to be a teacher.

Schrag: My naive idea was that I would keep doing what I knew how to do, but with students involved. This was reinforced by a couple of other factors. One was that this was what Mike was doing. Like myself, Mike had been at the Fund, and so his version of clinical legal education, and the only model I had, was that he was doing big, nationally important test cases using students as researchers and writers and thinkers and helping to work on these cases. And so that's the model I quickly fell into when I started teaching. The other thing that reinforced this model was that the Columbia faculty was very supportive of its clinicians once it hired them, but very much had a "show me" attitude about clinical education, about the idea of teaching in this way. And it was clear that the Columbia faculty was going to be most satisfied by something with which it was most familiar. Well, the thing it was most familiar with was academic articles. But the

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activist work that looked most like academic articles was federal court briefs, briefs in cases involving intricate legal issues, not the kinds of small cases that I had worked on in the state courts of New York in consumer protection, but cases that would challenge national practices or state laws, usually in federal court and were – one could write briefs with many footnotes that looked a lot like law review articles. And so there were many reasons why I started with a model of clinical legal education that involved big cases – did this for two years – handled a bunch of cases. One of them was, for

0:34:00 example, a challenge to the New York law that allowed self-help repossession, very similar to the *Snidach* case in a way, the case of pre-judgment wage garnishment, except that in pre-judgment wage garnishment the consumer's property was taken by a state official, a court official. Self-help repossession was harder to challenge because the law provided that if you didn't pay on your debt the merchant himself could come take away your property without the intervention of a court official. And so proving state action was more difficult – went into federal court as part of – this was one of the clinic cases to go into federal court to challenge that law. Another case that we handled in those first two years was that in those days New York state allowed women to be excused from

0:35:00 jury duty simply because they were women. They were allowed to serve on jury duty, but they had an automatic exemption, and so jurors were disproportionately men in New York state. And the clinic brought a case to challenge that practice. And, similarly, we did a series of big cases. But over a two-year period, I found for several reasons that this model didn't work, or at least I couldn't make it work. I know there are some clinics in the country that still use the large case model of clinical education. Frank Askin, at

Rutgers, somehow makes it work for him, but I couldn't make it succeed. I had two problems with it. The first was that we were at the mercy of the calendar. Columbia wanted to expose as many students as possible to clinical legal education, so my clinic was a one-semester clinic, not a two-semester clinic. And in big cases very little happens within any particular three-month period. So these were cases that went on for years, and no student saw more than one piece of a case. The most successful educational experiences, I think, were those of students began with a case because they could think through the planning of the case. That was a very good educational experience. But a student taking a case in the middle might see one deposition in three months, and so it was not a very controlled environment. It was not very easy to give every student a satisfactory educational experience.

The other problem with it was that there was so much writing on each case. For example, the self-help repossession case would affect thousands of people throughout the state, that I didn't feel I could take the risk of allowing a second-year student to argue the case orally in, say, the Second Circuit. I did the argument of that case in the Second Circuit. And that was not entirely satisfactory from an educational point of view either. So divesting students from responsibility at the ultimate moment, and also having to edit their brief so heavily because so much was riding on it that they felt that at the last minute the work wasn't as much of their product as they would have liked. So, after two years of this, Michael and I both started casting them out for a different model of clinical teaching, and for the next two years we adopted a different model. We

continued to use a large case method, but instead of filing the cases in real courts we created a simulation environment. We created a fictitious case of an ex-offender who was denied employment by a bank, arguably in violation of a state statute, an ex-offender who had served his time. And it was a very difficult and complex case. And Michael and I each taught 12 students in separate courses, and students met separately and discussed strategies separately, but they represented opposite sides of this case. One group of students represented the plaintiff, and one represented the bank. And so we had two courses suing each other – very, very complex litigation. We had faculty members playing the judges. We did depositions and motion practice and settlement negotiations and the whole nine yards. And it was very exciting, but it was a more controlled environment. And this time we could let students do it all, write all the papers and do all the arguments. And it was a lot of fun. And ultimately we asked Bill Pincus for a grant to spend a summer writing this up as a book, as a teacher’s manual, so that it could be replicated at other schools. Pincus was very skeptical about this. Pincus hated simulation. He loved – he had a very clear idea about the importance of the live-client relationship, and he very much disliked simulation. But, to his credit, he recognized that this work we had been doing might be an important contribution to clinical methodology, and he funded our – he gave us a grant to write this book, and it’s published ultimately as a supplement, one of three supplements to the Bellow and Moulton casebook by Foundation Press, and it’s called, *Toward Simulation in Legal Education*. We did this for about two years, and then we switched again.

Hall: Can I ask one question about those two years?

Schrag: Yeah.

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Hall: Did you guys abandon the court work altogether while you were doing the simulation?

Schrag: Yes. We completely abandoned court work and threw ourselves into the simulated work, and in the course of it invented a whole series of classroom exercises, which were the classroom component of this litigation which could be used, and which we later did use, to supplement live-client clinical work; that is, for example, at the beginning of any live-client clinical work it makes sense to train students how to interview their clients before they interview them. Well, how do you train students to interview their client for the first time? The work that Michael and I did in creating a simulated interview setting for this simulated case has very strongly influenced how I teach preparation for a first live-client interview now through a simulated interview.

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Hall: Actually, can I ask you for an illustration of that? How did your technique evolve in terms of training students?

Schrag: Well, the essence of creating good simulations – and I’ve done quite a lot of this now – the essence of it is to develop a deep and rich context. And that means not giving the actors who are going to be in the simulation a short script and ask them to extemporize it – it doesn’t always work that way – but to develop a very richly textured script, instead

of rules for them, so that they are very much like a live client and can answer almost any question that the student would throw at them. And so we did that for this so-called “Meyers” case, the ex-offender’s case. And I’ve done it for many other simulations that I’ve invented since in subsequent years. I created a simulation of a House of Representatives – I wrote with Mark Talisman – it’s a very long article in the *Seton Hall Legislative Journal* of 1984, which I’ve run three times. Once when I visited at West Virginia we ran it for three days, involving the whole law school essentially. And it was on the evening news on television. It was a really big deal. But it was very deeply contextualized, and it had so many details that were thought through that nothing could go wrong when students played it out. And I’ve taught Civil Procedure using a year-long simulation in which actors and actresses are the clients and the witnesses, and periodically appear in the class. Every time the students have learned about an aspect of civil procedure, they act it out in the context of this case.

Hall: Phil, one last question on this period. Given the fact that you had considered your own social activism in the courts as such an important part, did you feel any sense of loss during the simulation period? I definitely get the educational excitement, but did it eat at you that you weren’t actually trying to make new law?

Schrag: In fact, it still does. I’ve continued – as we’ll get to, I’m sure, in this interview – I’ve continued to teach clinically for a long time. But as you can see where we’re going with this, my cases have become small cases where the students can more reasonably handle

the work themselves. And this has taken me out of law reform work to a significant  
0:44:00 extent. But I've missed that, and so I have found ways to keep my hands in in others  
ways, usually not involving students. One of them is that when we occasionally lose a  
case in my clinic – it doesn't happen very often, but it does happen once in a while – I  
have done the appeals. Second, I've done a considerable amount of legislative work and  
regulatory work. We're now located in Washington where it's kind of the center of  
regulatory reform.

And then finally in 1982, I did something that's sort of a once-in-a-lifetime piece of law  
reform work. I was elected to the D.C. Constitutional Convention. D.C. is trying to  
become a state – it has been for a long time – and in 1982, elected delegates to write a  
0:45:00 state constitution to present to Congress as part of a statehood bid. And I was one of 45  
elected delegates who participated in that three-month constitution writing exercise – a  
lot of fun.

Hall: Okay. We're going to back up in time a little bit. You had said after two years of the  
simulation, you and Mike shifted course again. What did you actually do, and what led  
up to it?

Schrag: The thing that led up to it was I think Mike took a sabbatical for a semester, and I was  
on my own to figure out what I wanted to do. And I decided to throw myself into the  
more traditional model of clinical teaching that other clinicians at other schools had

used, having students handle essentially legal aid type cases – small, ordinary cases of the type that legal services lawyers handle. But I decided to do this by immersing myself and my students in it. So I got the permission of the Columbia faculty to offer an experimental course on a one-time basis for six students, eight credits, one semester, and we would remove ourselves from the law school entirely. And I and they would all go to the Harlem office of the Legal Aid Society and be legal services lawyers for a semester. This was a great experience. We handled them – just anything that came in the door – learned a lot about a number of new kinds of areas of law that I’d never worked in before. And the essence of the educational experience was that we met – the seven of us met as a class every single day so that we were all up on each other’s cases, and all kibitzed and contributed to each other’s cases. Because this was eight credits, as opposed to the four that the students had gotten for handling the big case work, students were able to take on much more of the work, and we had the cooperation of the lawyers at the Legal Aid Society to guide us who were onsite. And it was really a very special and extraordinary experience. That influenced my subsequent clinical teaching as well.

Hall: Leading up to this, what was your relationship to Meltsner? How often did you guys talk back and forth with each other, and how did you guys sort of help each other build what you were doing?

Schrag: We had offices that were very close to each other at Columbia. There was only one office intervening between the two of us, and that was the office of Professor Ruth



Bader Ginsberg. We didn't know her too well – I guess we were working very closely with each other, and she was running the Sex Discrimination Clinic at the law school. So we would just bypass her office all the time and not spend nearly enough time schmoozing with her. She was quite busy with her own sex discrimination cases, and we were in each other's offices all the time, and collaborating and cooperating and writing together. In those years, we not only wrote what became a series of articles on clinical legal education, but also a fairly obscure book that never went anywhere called, *Public Interest Advocacy*, that was designed as a casebook for clinical courses dealing with large cases, since there were very few clinical courses dealing with large cases like we were. This book had very few sales.

Hall: Oh, well. (Laughter) Actually, you raised an interesting question. How many clinics were there at Columbia, and what was it about your relationship with Meltsner that you and he were collaborating so much more closely than you were with some of the other clinicians?

Schrag: There were four or five clinics at the time. Harriet Rabb was running a clinic in Sex Discrimination and Employment Practices with George Cooper. Kellis Parker started a Housing Clinic, I think. Ruth Ginsberg had the Sex Discrimination Clinic, and we had two sections of what was called CLAR, Clinical Legal Assistance Resource, which was kind of an empty name, but it meant that we could figure out what we wanted to do with it. I think the reason we collaborated together so much was simply because we had the

foundation of work together at the NAACP Legal Defense Fund, and we liked each other a lot and found that we could write together very well by – we had a lot of respect for each other’s work, and could write together very well by – not only books and articles, but also teaching materials – by just passing them back and forth.

Hall: What was the genesis of the Notes from the CLEPR Colony?

0:50:00

Schrag: In 1975, I had done this experimental course in Harlem. And Mike and I had come to the conclusion that we wanted to try to teach a course based on a legal services model like other teachers around the country were doing, but had come to the conclusion that four credits, which Columbia had allocated to our clinic, was not nearly enough to do this with, that students really needed much more time. Now, law faculties are very stingy about credits. They are very reluctant to give more credits to new courses. And they were particularly skeptical of clinics. This is still the mid-70s – clinics are still quite new. And I felt a great need to educate the faculty about why we needed a different model, and what we needed to make this work. So, that article, called “Report from a CLEPR Colony,” began as a very lengthy memorandum to the Columbia law faculty to justify a credit increase for the clinic and a new model, and, incidentally, more money, because we wanted a third collaborator to work with us – that we eventually were able to obtain that. Our third collaborator in the years 1975-77 became Holly Hartstone. And we wanted space – we wanted an office, a much bigger office to operate in. So, that article began as a justification to create what became the Morningside

0:51:00

Heights Legal Services Corporation, an in-house legal services corporation that was the basis of the clinic. And after the report was accepted by the faculty, we got the increased credits. Students could take our clinic for seven credits – six if they didn't write a paper about their experience, seven if they did – most people did. And we got a wonderful basement space in a building on the main campus of Columbia University, not in the law school, where we all hung out outside of the law school, we and our students, and ran a law firm.

Hall: You had both models. Initially you were in the law school, then you were over in Harlem, and now this third facility. Did it work better for you to be separate from the law school?

Schrag: At the time, I think, yes. It was – we needed to have more independence, a little bit less scrutiny, a little more opportunity to experiment. But I had the reverse experience at Georgetown years later, where we started out in a separate building, and then as Georgetown obtained more physical space, the clinic moved into the law school building. And I have to say it's much better inside the building. But this is a different era in which clinics are really much more accepted than they were.

Hall: From the point of view of you and the students, how much was there of an “us against them” mentality vis-à-vis the regular law school?

Schrag: I think there was relatively little of that from the student perspective. I think the students just saw this as an extension of their education. Among clinical teachers generally in the 1970s, there was something of a siege mentality that clinicians were trying to prove themselves and become accepted. This was less of a problem at Columbia than at other schools. Columbia only selected as clinical teachers people it thought it could ultimately tenure, and did ultimately tenure, like Michael and myself and Harriet Rabb, of course Ruth Ginsberg. And so there was an expectation that we –

0:54:00 that although the method of teaching might be questionable, these are the people they wanted. We never were worried about job security at any time.

Hall: The report itself did that. Did it achieve the effect you were hoping for, of really educating the mainstream faculty?

Schrag: Either it educated them, or they looked at its bulk and said, “Well, these people must know what they’re doing.” But, in any event, we got our facility, and we got our credits. And for a year and a half we ran a very experimental program, a very unusual program at this facility – unusual in the sense that although we were handling small cases like many other clinics around the country, we were doing two other things at the same time. One was that we were pushing student responsibility for these cases to as extreme a limit as

0:55:00 we could do. We, having gotten rid of the large case model, where we had to take so much responsibility ourselves, we moved entirely in the opposite direction, trying to let students make as many decisions as they possibly could, and handle the cases as

independently as possible. And from the get-go, for example, when cases went to court for trial, Michael and I sat in the back of the room and watched. We never sat at counsel table, although around the country many other clinicians were sitting at counsel table and were helping with the trial and passing – or at least passing notes to the students. We made it clear from the beginning that we weren't going to do that. We would help students prepare, but then they were going to be on their own.

0:56:00 The second thing that we did that was very experimental was that more than any other clinic, I think that we knew of, we were also trying to teach about the relevance of group dynamics and interpersonal dynamics to the practice of law. And so in our classrooms as we taught the clinic we would take a time-out for 10 minutes out of every hour or so, sometimes longer, in which we would discuss what was happening in the room at the time, what was happening among the teachers and students below the surface that nobody was talking about. What were the authority issues? What were the gender issues and so forth that were the unstated business of the classroom? And the point here was to sensitize students to all the interpersonal things that were happening at any given time in any work group, with the idea that this would make them better lawyers. Because they were always going to be working in work groups, courts or other settings where interpersonal relations were important.

Hall: How did they get started? I mean, that's the kind of thing that it just doesn't seem  
0:57:00 evident that that would be a necessary part of your training, and yet obviously relevant

once you do it. So was that your idea? Meltsner's idea? Where did it evolve from?

Schrag: This was really a Meltsner initiative. He had gotten involved with something called the A.K. Rice Institute, which was a group of people, of psychologists mainly, who had started in Great Britain and had a branch in the United States that worked on the group dynamics of work groups. This was not an effort to enable people simply to achieve better self-awareness or greater understandings of themselves; it was specifically aimed at the dynamics of work groups, with the idea of making work more effective by enabling people to understand the secret dynamics of groups that were interfering with, or sometimes helping groups to work. And both he and I attended several workshops of  
0:58:00 the U.S. affiliates of the A.K. Rice Institute. I attended two of them; Michael I think attended more than two. Michael became a trainer in this program. And this influenced our work in clinical teaching.

Hall: And did that in fact seem educational to the kids? Did it seem very eye-opening when you did these time-outs?

Schrag: Some students got more out of it than others. One of the most striking experiences that I had was that years later, when I was working in the federal government in Washington during the Carter administration, one of our Columbia students called me up, and he was working at the time – he had graduated, and he was working as a special assistant for Attorney General Ben Civiletti. And he called me up in Washington, and he said, “You

know, the only thing at Columbia Law School that even began to remotely prepare me for working at a high level in federal government as a special assistant to the attorney general and sitting in meetings all day was learning how to figure out the group dynamics sitting in a circle at the clinic, and talking about what was going on in the room. And that has tremendously helped me to understand what's really going on in interagency rivalries and turf battles and so forth in the federal government.

Hall: Okay. One other question. I know – or many other questions. Were there any other things that you would say seemed particularly experimental during this period? – because obviously there was a lot of fertility and sort of innovation that you and Meltsner were doing here.

Schrag: Well, I think that there were all kinds of little experiments at the time. I should say that this experience also was something that we wrote up in an article in *Pennsylvania Law Review* called, “Scenes From a Clinic.” And some of them, for example, were – I mean, this was very experimental stuff, not all of which we’ve continued to use over the years. Some experiments succeed, and some don’t. But one of them, for example, was to teach counseling by having students counsel each other about real life problems they were having in their own lives rather than create an artificial simulated situation. And I think the students got something out of that, but it was kind of a complicated and risky endeavor, because it required a great deal of personal revelation.

Hall: Start off by stepping back a little bit in time on a couple of things before we go too totally toward the present. You mentioned Bill Pincus early on. And I was wondering  
1:01:00 how extensive your dealings were with him, and what you remember about him.

Schrag: I think I only had one real encounter with him, and that was when we asked him for the money to write the book on simulation, and we spent about an hour in his office at that time trying to persuade him to do this project. But he was not somebody that I was close to, or had much to do with.

Hall: Were there any other figures that would now be considered pivotal in clinical legal education whom we haven't talked about yet that you had extensive dealings with early on?

Schrag: During the '70s, the New York clinicians and those from surrounding cities had a regular regional series of meetings to support each other and share ideas. And Gary Bellow came to some of those meetings. And I think his – although I can't point to a  
1:02:00 particular idea of his that was important, I know I felt enriched by every experience with him. And I left out when I was describing the clinics at Columbia in those days – I left out Jack Himmelstine, who was also running a clinic, and of course Jack was – Jack's ideas were also of great interest. Jack was probing at the time issues of personal fulfillment and value creation and that while it was different from the group dynamics work that Michael and I were doing, it was also quite introspective. So that reinforced



the work we were doing at the same time.

Hall: If I can ask you, it seemed like very rapidly the clinical movement became more than just, “here’s a different classroom methodology.” It seemed to open itself to all kinds of things that people hadn’t really talked about. You know, counseling and interviewing was one thing that was talked about by a number of people yesterday. The group dynamics is another. What was it about this model that seemed to open itself to all this other sort of range of experimentation?

Schrag: I think it’s the fact that in the traditional law school classroom you could teach some things very well, like dissection of cases and analysis of doctrine. But the vast majority of things that lawyers do aren’t particularly well addressed in classroom teaching. I know this because 50 percent of my work has been regular classroom teaching. I’ve taught a large variety of courses, from Tax to Legislation, Administrative Law, Civil Procedure. In all that range of courses, the skills that I’m teaching are fairly narrow, whereas the skills one should teach in a clinic are quite broad, starting with the one I think is the most unusual or different kind of skill that we teach in the clinic, which is planning something. There is – that skill is just not very well addressed in a classroom where you’re studying basically historical materials, not planning future activity. The other thing that is really different about a clinic from a classroom is something that could be done more of in classroom teaching, but usually isn’t, and that is teaching collaboration. Classroom teaching is by and large very individual. People take

individual exams. We encourage people to have study groups. We don't do very much to foster them or supervise them or teach people how to use them well. And in clinics usually we're working in groups of one kind or another, or partnerships of students, and we can help teach people how to work together, which of course they're going to be doing most of their lives.

Hall: Now during the time you've been describing at Columbia, you and Mike used several different models. By the time you'd left Columbia, had you come to any kind of settled, "Of the things we'd tried, this is what we think works best"?

1:05:00

Schrag: Well, I think we were most satisfied from an educational point of view with the model at the Morningside Heights Legal Services Program. And when I took a four-year break from teaching serving in the Carter administration as the deputy general counsel of the U.S. Arms Control and Disarmament Agency, when I returned at the end of that administration to teaching and switched to Georgetown, because I was established in Washington, I pretty much started where I'd left off at Columbia using a model quite similar to the Columbia model with a couple of important differences. One is that Georgetown already had a system in place whereby the clinic I was given included two teaching fellows. These were graduate students who were already lawyers. One of them was Sandy Ogilvy, who's masterminding this oral history project. And so I became part of a substantial group. I joined the Georgetown faculty with my colleague from the Arms Control Agency, David Koplow. And together, with two teaching assistants, we

1:06:00

had a group of four people teaching without having to fight for it. We also had six credits that just came with the territory. And while that wasn't enough, it was like starting very close to where we were at Columbia and with the ability to seek more over time, more resources over time. It was a long battle, by the way, too. I didn't expect it to take so long, but eventually we were able to work the clinic up to 10 credits for one semester, which really gave the students the opportunity to handle very complex, individual cases very thoroughly.

Hall: What kinds of cases did you initially start taking on when you came to Georgetown?

1:07:00

Schrag: The first year I was at Georgetown I inherited a caseload that the clinic had been working on before I got there. It involved a mix of Social Security disability cases, which were new to me – I'd never handled them before – and military discharge upgrade cases, also something completely new. I got trained in doing Social Security cases by handling one myself under the supervision of Sandy Ogilvy, who acted as my supervisor. And I taught him something of the method that we had been using at Columbia, a method that was pretty non-directive in terms of – no method is entirely non-directive, but relatively non-directive along the scale of supervisory methods. And he taught me substantive Social Security law. And so I handled my first case in partnership with Dave Koplow. And, lo and behold, we won it! – a very satisfying clinical experience as a student.

1:08:00

Hall: Actually this ties a little bit back to the Columbia experience, the non-directive aspect where you said you actually would have students go up. You sat in the back watching rather than up at the counsel's table. What was the educational benefit of taking that kind of more hands-off approach?

Schrag: One of the primary goals that we adopted for ourselves as clinical teachers was to teach students to be able to handle a lot of responsibility, to be able to accept it, live with it, feel comfortable with it. Many of our students, then and now, come to the clinic having been directed all their lives as to exactly what they should do: school assignments, parental instruction. They've never had the opportunity to be very independent and to figure out how to learn, or how to win a case, how to undertake any project. So part of our goals were to enable students to take on responsibility. There was even something of a social justice or social reform mission buried in that goal, because it was our thought that people who are more independent, less dependent on authority, are more likely in the long run to be able to create new institutions in society, criticize old ones, build their own operations and institutions. And so we wanted to enable people to take charge of their lives.

Hall: I know just from the other interviews there's a lot of uncertainty as to what the long-term impacts of the clinical programs are. But can you generalize, you know, looking at the kids that you got from when they first came into contact with you versus when they were checking out at the end of the last class? How were they different at the end

1:10:00 typically from when they began?

Schrag: I think it's very difficult to generalize. We get all kinds of students. But I think that in many cases at least students felt much more able to take on something they knew nothing about and enter into a new situation with much more self-confidence that they could master it. They could figure out how to do a project starting with very little in the way of knowledge about it.

Hall: Okay. Well come back to Georgetown, the Social Security, you know, disability cases and the military cases. Were those particularly satisfying to you, or did you want to go in a different direction once you sort of had more autonomy?

Schrag: Social Security cases were excellent teaching cases. They went from start to finish in a single semester, which was wonderful for the kind of program we had which was limited to one semester. They were small enough so students could completely master them.

1:11:00 We won nearly all of them, so that students would have a very satisfying experience and could really help somebody. And they were so good that we stuck with them for 15 years. The military discharge cases were less satisfactory teaching tools for a variety of reasons, one of which was that the timing was not very good. The decisions took forever to be reached. And also they were very far from my experience and David Koplow's. And so we swapped those out and took on consumer protection cases as the second kind of case – a type of case with which I had been familiar for a long time, and

which was very good in Washington, D.C., because Washington had two different fora in which such cases could be resolved: a small claims court, and a Department of Consumer and Regulatory Affairs, which was an administrative agency for the resolution of consumer complaints. And just deciding which forum to be in was a very difficult and interesting complex planning problem for students in every case.

Hall: Well, just tell me, you know, your time at Georgetown – I know you mentioned you got into working with immigration, but just what are some of the highlights of your time at Georgetown?

Schrag: Well, without a doubt, the number one highlight is working with the teaching fellows that we've had, the graduate student teaching fellows that we've had over the years. There have now been about 20 of them, because I've been doing it for 20 years, and the majority of these students have gone into law teaching and are themselves, many of them, clinical teachers. They -- when I got to clinical teacher conferences or Association of American Law School annual meetings and see this large number of people whom I helped to train -- came to me -- because we've become a very important clinical teacher training program -- see this large number of people who are now in clinical teaching, I very much feel like kind of a proud papa. And these are the people who have all become quite important in the clinical section of the AALS and in other clinical activities -- far more important than I am.

Hall: Georgetown seemed to have a bit of an early tradition in getting into clinical programs, at least on a small basis, even before the whole CLEPR thing. Is that a correct impression, and do you know why that might have been?

Schrag: Georgetown got into clinical education fairly early into the '70s. I'm not quite sure of the year of the first Georgetown clinic, but by 1976, four years before I got there, it was established enough so that it had to have a faculty committee spend a year figuring out the proper number of credits to be given to each clinic and so forth. There were by that time several different clinics. That committee report was something of an albatross around our necks, because it limited the number of credits that clinics could have fairly strictly. And it was only in 1999 that we were able to undo some of the damage it had done. And in some ways it was a good thing, because it ensconced clinics. In other ways its effects lasted too long.

Hall: Did you have any dealings with Bill Greenhalgh while you were there?

Schrag: Georgetown now has about 13 clinics, and had more than 10 the whole time I've been there. Bill was the director of the Criminal Justice Clinic. I was the director of a different clinic called the Center for Applied Legal Studies. And each clinic was pretty autonomous, so that we had relatively little to do with each other.

Hall: Okay, well tell me again just sort of how your work with the students and the

development of your program changed while you were there.

1:15:00

Schrag: The first innovation that we undertook, that Dave Koplow and I undertook after we changed the caseload of the clinic, was to experiment with something called the learning contract. We required each pair of students working on a couple of cases to negotiate with us an arrangement for how we would work with them throughout the semester. They would negotiate this during the first week of class. And we'd work out a learning contract that would specify how often we would meet, what we would do in our supervisory meetings, how we would respond to questions, what kinds of help we would give, how much independence the students wanted, so forth. We used this method for about 10 years, and we still use a variation of this method, although we no longer require students to negotiate a formal contract in the first week. What we now do is we tell them that we have a pretty good plan of how to work together. We now use this as a very elaborate 30-page disclosure instrument, and tell them how it's going to be, but tell them that they can propose changes in it at any time so that they're not forced to negotiate the contract, but they're permitted to negotiate changes in this agreement or arrangement at any time. And we do work with them, and we do have to make changes from time to time with many teams who need more supervision than we initially propose, or in some cases less.

Hall: Have any problems come about, or any cases you remember where the students weren't successfully handling the sort of level of autonomy you gave them where you had to



intervene?

1:17:00

Schrag: There've been a few cases where we've had to provide greater direction than we would have liked to in the writing of a brief, or the decision-making in a case – not very often, but it happens once in a while. But I'm happy to say that there has been no instance still, in my 30 years of doing this, in which I had to take over at the trial, or even sit at counsel table.

Hall: Fairly early on you mentioned doing the D.C. Constitutional Convention. Was that something that involved your students at all, or was that simply an activity that you – ?

Schrag: Yes, that was a one-time event, and it did involve students. After I was elected, we had clinic students selected – Dave Koplow and I were teaching together, and we had clinic students selected for the following semester. And I offered that if the students – if there

1:18:00 were six students who wanted to work with me on the constitutional convention instead of doing the traditional clinic work that semester, they could do so. So six students and I went off to the convention for the semester, and they helped do research on the issues that came before the convention, constitutional law issues, basically state constitutional law. They observed sessions. They wrote papers about the convention. And they too got immersed in the work on the convention. It was a very different kind of clinical model.

Hall: What were some of your greatest satisfactions, and what do you think were their satisfactions from those three months?

Schrag: For me it was a tremendously different kind of learning experience, and in a surprising way. The surprising way had to do with race. I was one of about one-third of the delegates who were white, and two-thirds were black, reflecting the composition of the District. And, to my surprise, race became a big issue in the constitutional convention from the get-go. The black delegates formed a black caucus. And I was familiar with black caucuses, but usually black caucuses were minority caucuses. Here the black delegates were the majority group, and they felt it necessary to form a black caucus and exclude white delegates, even though they had a two-thirds majority of the convention. This was very puzzling to me, and the white delegates didn't know how to react to it. And for the first time – and so one of the white delegates called a meeting of a white caucus to discuss how we should respond to the black caucus. So for the first and only time in my life, I found myself part of a group – lasted all of two hours – it was still an extremely uncomfortable event – that was a meeting, a whites-only meeting, to discuss whether we wanted to continue meeting – which we didn't – and how we would deal with the black caucus, which we couldn't do. We felt so guilty about even being in an all-white meeting that we couldn't stand being there, and it disbanded. And then we discovered, after about a month of kind of racial politics in this convention, that when the convention got down to serious business, the race issues disappeared, and political divisions, conservative-liberal divisions, emerged instead. And they crossed race lines,

and that was a fascinating shift. And I wrote a book about that, called *Behind the Scenes: The Politics of a Constitutional Convention*, that explored that shift.

Hall: From the point of view of the students, would you say their perceptions paralleled yours, or might they have gotten other things out of the convention?

Schrag: Yes. They helped analyze it, and I think that they came to similar conclusions that I did.

1:21:00

Hall: Okay. Coming back to once you were back on the campus at Georgetown, when did you start working with immigration cases, and what led to that?

Schrag: During the early 1990s, our clinic was always oversubscribed, but the degree of oversubscription was constantly falling. And there was a writing on the wall that students were becoming less and less interested in doing Social Security disability cases and consumer protection cases. And I think it's a little sad, but it was real. And it was part of a very long-term trend that started when I first started teaching in clinics. In the early 1970s, poverty law was the cat's meow. There were several poverty law

1:22:00

casebooks on the market. Poverty Law courses were full. In the fall of 1971, at the same time I started teaching clinically, I taught a straight classroom course called Consumer Protection Law, and 120 students were in that course. When I taught the same course the next year, although I had gotten very good course reviews, the number of applicants/enrollees fell to about 60. And I think there was a steady decline in

interest in the problems of the poor throughout the '70s and '80s, unfortunately. And there's a great deal more student volunteerism in homelessness projects, and interest in participation, but not necessarily in legal ways, and particularly not in academic ways – not in taking courses on these subjects. And there were always Poverty Law courses at all the law schools, but the enrollments were quite small compared to what they had been in the '60s and early '70s. At the same time, student interest in international human rights was growing at a very rapid pace. And, at Georgetown, hundreds of students signed a petition to create a human rights clinic. The law school didn't have funds to create a new clinic, but I saw a way to meet both the students' interest in having a human rights clinic and my need to have – to avoid a situation where enrollment in the disability clinic would fall below seats available. And it was also time for me to refresh myself by learning a new area of law. So I spent a year going around to human rights activists in Washington, asking them what they did and trying to figure out what would make for a good clinical experience. And Rick Wilson at American was already doing some asylum law work. Debbie Sanders at the Washington Lawyers' Committee for Civil Rights and Urban Affairs helped convince me that the best work we could do, and most needed work that was most needed in the community, would be to handle asylum cases. So I converted my clinic into an asylum law clinic. We started off in the fall of 1995 with students handling two cases each, and it nearly killed them. We kept time sheets that semester, and the students were doing an average of 52 hours a week work for six credits. We had picked two cases each simply because we had always done two cases each, but after that semester we cut it down to one case apiece. And eventually we

got it down to one case each pair of students for 10 credits, which turned out to be about right. That's about 35 hours a week work for about 10 credits is about the right course load.

Hall: What was it about these cases that made them that much more intensive than what you'd been doing?

1:25:00

Schrag: These are life and death cases. These are cases where the student – where the government of the United States has determined that a person who claims to be a refugee is not a valid refugee, and has put them into deportation proceedings. And we claim the government's made a mistake, that these people really qualify as refugees under the U.S. Refugee Act; that is, they have a well-founded fear of persecution if returned to their home countries. The government usually either doesn't believe their story or says that, Well, even if your story is true, it doesn't qualify you as a refugee under the very complicated refugee case law that's been developed over the last 30 years. So we contest these cases in a court called the Immigration Court – it's an Article I court. And if we win our client starts on the road to American citizenship. If we lose, the client may be sent back home to torture and death. So in a way each case is a potential capital punishment case. And the students just throw themselves into these cases and do an incredibly wonderful job and win nearly all our cases.

1:26:00

Hall: Are there any – let me just ask you generally – obviously there's a deep emotional

impact on your students once they're confronted with this. Do they take it with total seriousness from the minute one, or do you see some sort of deepening of their commitment as they go along in these cases?

Schrag: Both. They take it totally seriously from minute one. They know what they're getting in for. They knew that even before they signed up for the clinic, because we're very elaborate in disclosure materials. And also after 10 or 15 meetings with their client, the bonds are very, very deep so that when the decision is announced – but the judges – another great thing about these cases from the point of clinical teaching is the judges announce their decisions at the end of the trial from the bench. And the students know that that's going to happen. So they build up to a tremendous theatrical climax, through no planning of our own – it's just the way the judges handle the cases. And whatever the result, if it's a win or a loss, it's a very emotional moment. Usually it's a win. The clients are in tears, the students are in tears, everybody's hugging in front of the courtroom. There's a tremendous party afterwards. These are very, very – even though they're small cases on behalf of individual clients, they're very serious and important cases.

Hall: Phil, what about the educational support? What's your role with the students, and even with the clients as this is unfolding?

Schrag: Well, I don't see the clients at all until a mock hearing that we do a couple of weeks –

the first – sometimes several mock hearings that we do a week or two before the trial in which I play the judge or the opposing INS attorney. With the students I play a very strong role; that is, this is all subject to the agreement that we have worked out with them. But usually we meet once a week. The students are required to bring a written agenda to each meeting. The written agenda will control the meeting. That is, we'll – and the students must run the meeting. They must learn how to run meetings, and move us through the agenda. And if the time is up, and they haven't finished the agenda, we stop – and they learn to keep time in a meeting. And in the meeting there are a whole series of somewhat stilted rules – unless the students negotiate out from under those rules – one of which, the one the students hate the most, is that we teachers try not to answer questions off the fly that the students haven't thought of and try to think through with each other before the meeting, so that if an issue arises for the first time in the meeting or if an issue arises that the students come into the meeting with but they really haven't done any research on or work on coming into the meeting, we'll often parry the questions saying, "Look, I could answer that question – I actually have an idea about what you should do next – but I think you'd learn something more by trying to do some work on this for yourself. What would you like to do? Would you like me to answer the question right now, or would you like to have an opportunity to work on this a little more?" And although they hate that question, sometimes they say, "Answer it right now," and sometimes they go back and work on it some more.

A year ago one of the students wrote an article about her experience in the clinic dealing

with this method of supervision. It's in Volume 6 of the *Clinical Law Review*. It's called, "Where in the World is Dr. Detchakandi?" and it deals with a single fact that she was trying to investigate, and my response or non-response to her efforts to go after that fact. I think it's a nice little article that explores this teaching methodology from the student's point of view.

Hall: Of all the different kinds of work you've done, is this model, working with the immigration cases, the asylum cases, has that been the most overall satisfying?

Schrag: It is very satisfying. The cases are very satisfying. I feel – I got into this work in part as a result of a visit to the U.S. Holocaust Memorial Museum in 1994 when I was casting it out for some change in the clinic. And seeing the rescue work that some people did just before and during the Holocaust was very inspiring. And I think the students are part of that tradition of helping to rescue people in need who are in danger of very serious persecution or death. So it's very satisfying to feel part of that tradition. What's unsatisfying about it is that it's very time-consuming, and it leaves me with very little time for more complex law reform work, although I have found some ways in which to do that, although sadly not with students. They had a – I think one of the worst classes of my life – that is, one of the most disappointing to me – occurred during the fall of 1995, toward the end of that fall. The students had done backbreaking work, won all their asylum cases, had done marvelous work on their cases. But Congress was in the middle of passing legislation to significantly cut back on the procedural rights of asylum



seekers. And I taught a policy class at the end of the course in which I asked students,  
1:32:00 “Well, what could you do about this impending law which would cause you to lose most  
of the cases you’ve just won?” And they had no ideas at all. Even though they had done  
fabulous work on the cases, and they were experts on asylum law and on asylum clients,  
they didn’t even have ideas such as, “write your congressman” or “write a letter to the  
editor of the newspaper” – ordinary civics ideas that most people learn about in high  
school. They felt experts on advocacy, but totally lost on legislation. And when I  
probed why, there was this disconnect. I learned that they all felt terribly powerless, that  
they thought of Congress as an institution that responded only to money and celebrity,  
and thought they could not possibly have any influence over legislation. And I realized  
that I too hadn’t done anything about this bill that was hurdling down towards us and  
1:33:00 that was going to affect the clients that I worked with. So I threw myself into the  
legislative work, and I spent a year trying to defeat some of the worse parts of that  
legislation, with some degree of success. But I never found a way to involve students in  
that work. It involved memos to members of Congress that had to be written overnight  
in response to very rapidly changing developments as the House Rules Committee  
would make one decision after another, or different member staffs would provide a new  
piece of information about a member’s thinking, or as developments in the field, that is,  
in members’ districts would change, a member would be coming to town or not. And  
although I worked with a large community of immigration advocates – and that was very  
satisfying work – I just couldn’t find a way to work in students – and teach them  
1:34:00 anything on the kind of timetable that legislation moves at. I’d still like to find a way to

integrate students better into law reform work, but it's very difficult, and it raises some of the same issues that I started worrying about in the early '70s when I was doing big test case litigation.

Hall: Actually early on, even before you started talking about the '70s, you made a comment in passing that in some ways you had more success in helping to reform law or change law than in actually, you know, the actual courtroom work you were doing early on. And then, you know, talking about your early [inaudible] noticing the importance of tactics. Has there been any way in the clinical model that you've been able to get at some of those issues with your students, about what happens outside the courtroom, and those roles that a lawyer plays?

Schrag: Because of this experience in '95, we have tried to build some of the larger issues into the clinical program systematically. We now have – I now teach a class in asylum and refugee history at the beginning of the course. We have a class on the Holocaust in the middle of the course. And we teach a class on contemporary refugee policy issues toward the end of the course. We also encourage students to take a separate course in refugee law. And because occasionally a case goes up on appeal, there is some possibility of doing some law reform work through litigation. And I've kept, without students, I've kept a hand in it. Even after the 1995-96 law was passed I've kept a hand in the policy work doing work on some of the regulatory issues that have come up since then. But, as I say, most of this has not involved students.

Hall: One thing I'm hoping to include in whatever video we produce is some discussion of specific cases. So I'd like to kind of come back through the years. During your time at Columbia, are there any cases that your kids worked with that really stand out in your memory?

Schrag: No, because once we got to the model that was a typical legal services model, those cases were all individual eviction cases, or home improvement contract cases, things of a very small nature where we got a particular person to be able to stay in their home, but we were not making new law at that point.

Hall: What about at Georgetown?

Schrag: Similarly at Georgetown, the actual individual cases we've handled are memorable only  
1:37:00 in their impact on the individuals. For example, one of the asylum law clients that we had was a man who had been a – he was a Christian in a radical Muslim territory. And for his Christian activism he was, four different times, hung upside down by his feet and had hot boiling oil poured on the soles of his feet, was beaten with plastic rods and suffered other terrible tortures. It was outrageous to me that the U.S. government would try to deny him refugee status. And it was very satisfying that we were ultimately able to win that case and keep him in the United States. And he's – last I heard, he was a ministry student in the United States and was on his road – on his way to American  
1:38:00 citizenship. So, that's very satisfying as an individual matter, but it didn't have any law

reform impact to speak of.

Hall: You said that some of these cases were virtually capital cases, or could be. And yet here you have students who aren't even members of the bar trying them. Since one of the goals presumably of this work is creating social justice and not just teaching students, what's your sense of the level of representation these clients got versus if you had not been intervening with this clinic?

Schrag: I think we provide the very highest level of representation around, in part because we're so labor-intensive; that is, two students work on a single case for about 35 hours a week  
1:39:00 That's 70 hours a week for 14 weeks. That's hundreds of thousands of dollars worth of legal help that we pour into each case – far greater than the clients would get anywhere else, except maybe through pro bono representation by a large law firm. The client who is represented by our students is very fortunate indeed, and our win rate I think reflects that.

Another advantage that the clients have by working with us is that the university provides, by way of overhead of the clinic, essentially unlimited telephone calls and faxes and e-mails to their home countries, so that we're able to get affidavits and other documents from Africa at considerable expense in terms of faxing back and forth that other attorneys might not invest.

Hall: I know each of these cases were individual. Were there any general themes or strategies that you find yourselves resorting to frequently in doing these asylum cases?

1:40:00

Schrag: Every case is different, and we have to plan every case from scratch. In fact, I think that's one of the things that we in the clinic, in my clinic in particular, do particularly well. We have, very early in the semester, a case planning assignment in which students have to write a lengthy plan of action. And of course they change it as they learn new facts and new law. But this plan is sometimes 20 or 30 pages of detailed expectations about how they're going to investigate the facts, what law they're going to research, who they're going to interview and so forth. We're teaching a model of not shooting from the hip. It's the exact opposite of shooting from the hip, which so many lawyers do – a model of very careful deliberation, and a commitment to it in writing. And that's the first serious piece of writing they do in the clinic, followed by several other pieces of writing: a lengthy affidavit, sometimes 20 pages, telling the client's life story – it gets filed in the court – and a brief in each case as well.

1:41:00

Hall: I'm going to step back and ask some broader questions about your overall experience. One is: What do you see as the primary focus of clinical education? Do you think of it as a tool for social justice, a tool primarily for training, or some combination?

Schrag: I think it's mainly a tool for training. I think that clinics, because of the fact that the law schools are paying the freight, and the mission is educational, have only a small role to

1:42:00 play. The possible exception is a few test case clinics that are still around, some of them environmental clinics. But most clinics are legal aid kinds of clinics or criminal defense kinds of clinics, so I think relatively little – relatively small caseloads and relatively little role to play in appellate litigation. They do a great job, however, in supplementing the work of the rest of the law school in training students to be whole lawyers, not just lawyers who can do the kind of appellate work that Yale trained me for.

Hall: I have no doubt from your early description that you could have been a very preeminent litigator had you not gone the route of instruction. Do you ever have any wistfulness or regrets about not having gone that route primarily?

Schrag: You mean working for a law firm?

Hall: Yeah.

Schrag: Yeah. I never had the slightest desire to work for a law firm. You only have one life to live, and there's so much need to work on the justice mission, whether we do that through teaching or through front-line litigation –

Hall: I was actually thinking more the latter, front-line litigation on social justice issues versus going the route you went.

1:43:00

Schrag: Well, I sometimes have some. I sometimes wonder whether I could have accomplished more along those lines if I had simply stayed at the Fund all along and made a career of that. Certainly those two cases, Supreme Court cases that I won, they were very important. On the other hand, the courts changed. It became less possible to make major social change through litigation. And I have been involved in some important legislative and regulatory projects over the years that have made a difference. One that I haven't talked about yet on this tape is that I got involved in 1994 in the issue of student loans. Public interest lawyers are under tremendous financial pressure. They often graduate with debts exceeding \$100,000, and legal services offices and other public interest offices start lawyers at \$32,000 on the average. And under ordinary repayment plans, students are often so squeezed by debt, that those who aren't independently wealthy, or who don't graduate from the minority of law schools that have their own good loan repayment programs, are sometimes unable to take public interest jobs simply because of the debt load.

1:44:00

In 1993, Congress passed a law that provides federal loans, direct loans from the federal government, for student education, including law student education. Students can consolidate their bank loans into this program, and allows students to pay back the debt as a percentage of their income, about 20 percent, so that they're never paying more than about 20 percent of their income towards their student loans. And at the 25-year mark, no matter how much they still owe, it's all forgiven. In '94, the Department of Education held a regulatory negotiation and then a rulemaking proceeding to write the

1:45:00

regs to implement this new law. And it proposed as part of the regulations that if a student – if this cap on a student’s income on the student’s repayment – if a student didn’t pay back all that they might pay given their interest rate because of this cap, the amount that wasn’t paid would be added to the principal. So you’d see the principal would keep adding up. And although it would be eventually forgiven at the 25-year mark, it would be a pretty steep amount to be paid if the student’s income rose before the 25-year mark, and the student would eventually be paying it off. Well, the proposed regulations said that this compounding would stop once this accumulated balance got to 150 percent of the student’s original debt. I came across this proposed regulation and thought it was pretty outrageous, and got involved as a citizen in the regulatory negotiation, because citizens are allowed to go to these regulatory negotiations and even speak at the end of each meeting. And I attended the regulatory negotiation sessions as a citizen and started attacking the 150 percent mark, saying that the number should be 110 percent, not 150 percent. And that once the balance got more than 10 percent above the original balance, compounding should stop. And I eventually persuaded the Department of Education to adopt this proposal. The department later informed me that the adoption of this change [inaudible], my lobbying for this change, had over five years caused a transfer of a third of a billion dollars from the federal treasury to students. So that was just a little, you know, this fun little thing, little project to take on. But in a way it had the kind of significance that those Supreme Court cases that I worked on in the late ‘60s did – certainly a lot of money involved – and that’s the kind of thing that one can do as a law teacher on the side, just kind of get involved in a little project like that and see it



through.

Hall: Let me ask you, when you started all this it was a very idealistic time. Has clinical education, in your mind, which has grown very dramatically over the last 30-odd years, fulfilled some of your greatest dreams that you might of had for it at the outset? In other words, what has it achieved, and where is it still maybe falling short?

Schrag: I think the results aren't all in on that. I think we have better educated students, but  
1:48:00 the students that we educate are a cross-section of students in law schools generally. So the vast majority of the students I train go on to work for law firms, and I'm certain that many of them fight against the things that I believe in – that they defend corporations that are accused of environmental degradation, or race discrimination, or consumer fraud, or other kinds of practices that I hate. So, am I ultimately helping society by training students better? It depends on what they go and do. And I don't know what they all go and do. And so I think that it – I certainly have also trained students who have gone on to important public service careers.

That brings up another point. Because I was so uncertain about where my students were  
1:49:00 going and what they were using my training for, I started another program at Georgetown called the Public Interest Law Scholars program, which I've been directing for 13 years now. And that's entirely satisfying, and I have no doubts about where the students are going in that one. We select eight students from each incoming class out of

770 applicants. And these eight students are given one-third scholarships – some are money – faculty advisors, public interest mentors from the community, a speaker series, and three special courses, one of which I teach – and they pledge to become public interest lawyers; that is, to be lawyers for nonprofit organizations or the government for at least half of their lives. And most of them have done it. Over 70 percent of the students who graduated in this program are public interest lawyers now. So I've, through this program, helped to train more than a hundred public interest lawyers over the years. And that's very – and I'm in touch with most of them. We have an active alumni association of this group, and a newsletter and a passworded Web site. And I feel very fulfilled by this strong group of alumni who are doing wonderful things, many of them in the news all the time.

Hall: Phil, has that model been replicated at other law schools that you know of?

Schrag: The main place that it exists is at NYU in the Root-Tilden program. I subconsciously modeled this program on the Root-Tilden program, although the Root program provides two-thirds scholarship instead of one-third scholarships, because they have a bigger endowment than we do. But there are little bits of it being created at other law schools. Penn has four scholarships a year, although I think they don't have much of an academic program that goes along with it. UCLA has started a similar program. Stanford has started a similar program. So I think it is catching on at some other places.

1:51:00

Hall: In your mind, are law students who are trained to the clinical model, or partly through the clinical model, are they better lawyers than students who are not?

Schrag: I think so, but of course there's no empirical test to that.

Hall: Should there be?

Schrag: That would be very, very expensive to do, and I'm not sure it's worth doing.

Hall: In your mind, what do you think have been the biggest successes of the clinical legal education movement, and where do you see its future going?

Schrag: Well, I think it's successful in just supplementing the traditional law school teaching method. It does some things that law schools don't do elsewhere in the classroom. It's not a revolutionary change in law school teaching; I don't think it's changed the character of law schools. I didn't – I really never expected it to, because it's – except perhaps at City University of New York – it's not the predominant method of teaching. So I think that it's filled an important niche, but it's neither revolutionizing the law schools, nor the legal profession, nor the United States of America.

Hall: Sandy, I'm done with my questions Phil, [inaudible] ask you questions [inaudible] or not think to ask, or are there some other questions as far as you are concerned? Is there

anything we've not talked about that should be included in this interview?

Schrag: I think that you've done a great job. You've basically covered the waterfront.

Hall: Okay, very good. Let me turn off the recorder.

Transcription of audio taken from video -- By: Sabrina Hilliard