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Interview with

***Earl Johnson Jr.***

Conducted by Alan Houseman

November 2, 2002

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Oral History Collection

Interview with **Justice Earl Johnson, Jr.** (EJ)

Conducted by Alan Houseman (AH)

November 2, 2002

Tape # 1

**AH:** . . . Law and Social Policy. Today I have the great honor to interview Earl Johnson who was there from the beginning of the federal legal services program and has been active in civil legal assistance ever since. We will focus initially on the beginnings of the federal legal services program in the Office of Economic Opportunity and turn to the rest of Earl Johnson's terrific and wonderful life on behalf of equal justice for the poor. Today is Thursday, November 21, 2002 and we are interviewing Earl Johnson. Before we turn to your role in the Office of Economic Opportunity, why don't you provide us a little background about your life, where you grew up, where you went to college and law school, those kind of background information.

**EJ:** I was born and raised in Watertown, South Dakota, which is the fourth largest city in the state of South Dakota with all of 13,000 people. I left there to go to college at Northwestern University in Chicago. This was in 1951 so it was in the middle of the Korean War. I went there as an NROTC student so my way was paid by the Navy in return for three years of service that later came. When I was in high school I was captain of the debate team and our topic the senior year at Watertown High School debate team was the welfare state, and I probably spent more time preparing cases for the debate team than I did my studies and I became persuaded of the shall I say the welfare state was the direction in which our country should move and at that was actually moving in that direction, we had had the New Deal and the Fair Deal, it was still the Truman administration. I became an avowed Democrat at a fairly young age with both of my parents Republicans but I became a Democrat as a result of that. And one committed to improving of life for low income people, income redistribution and that sort of thing. I also debated at Northwestern and was student body president eventually. In an era, we think of the 1950s as being this quiet time and so forth but actually on the ballot for the students at the same time I was on the ballot was a proposition to require that the fraternities get rid of their race clauses and their anti-Jewish clauses and all that sort of thing, or not be allowed to remain at Northwestern. That actually passed at a school that was over 50 percent Greek. It was also the McCarthy era and the Illinois legislature was considering imposing a loyalty oath and so our student body government took a position against that and I went down along with the head of the Faculty Senate to testify in the legislature against that bill, which eventually was defeated, but it wasn't defeated because of anything we said, it was defeated because a Korean War veteran came in and talked against it, somebody who represented the Korean War veterans at the time. But all of this got me very interested in public policy, got me interested in government. I had gone to college to be a psychologist. Then I decided I wanted

to be an economist and it wasn't till towards the tail end of my senior year that I decided that I wanted to be a lawyer. Then I went off to the Navy for three years which was really just marking time to go to law school. I felt when I was leaving the Navy to go to law school that I had this sense I was behind by three years because most of my contemporaries that had graduated from college had not gone into the service. By this time the Korean War was over, they were no longer drafting people and so forth. So I looked for a law school that I could get through very quickly and the University of Chicago still had a left-over from World War II, the so called summer entering program where you could start in June with nine straight quarters and essentially graduate in two years, get three years of education in two years. So I was part of that. That was the last of those, there were only eight of us in that class. Then as I neared the end of this intensive nine straight quarters I had decided along the way I wanted to become a criminal lawyer, be a D.A. for a while and then probably go into criminal defense. And I realize that my total exposure to criminal law at that time was one quarter of criminal law, they didn't even have a criminal procedure course at that time. And the Ford Foundation in the meantime had started a new program, an LL.M. program in criminal law at Northwestern and I decided well I've sort of saved a year of law school anyway and this would provide me the opportunity to pick up some real expertise in the field I wanted to go into which very few people would have. So I applied for that program. What makes this all significant is that Gary Bellow also applied for that program and we were fellow students. There was only five or six of us in this program. It was a wonderful year. It probably had a lot to do with shaping the fact that I got into academia, the fact that I went into the appellate bench and all that sort of thing. I got very interested in research and writing during that period of time. But more importantly it meant that Gary Bellow and I became fast friends. It's one of the few times, maybe the only time in Gary Bellow's career when he wasn't overloaded and could actually spend a lot of time enjoying life and we probably hit 100 movies during that period of time and we had long philosophical discussions, so he knew an awful lot about me. I then we both when that concluded moved to Washington, D.C. He to go to the federal public defender's office, me to go to the organized crime section of the Justice Department. And we continued

**AH:** What year was that?

**EJ:** That would be 1961, July of '61 we both landed here in the same city and we spent a lot of time socializing. I was still I stayed in D.C. for about a year with the organized crime section and at that time we saw each other all the time and continued our friendship. I then was sent out to Miami the field office of organized crime section and then I was sent to Las Vegas to start the organized crime section in our field office there. So I had been there, this is now we're on to say the early summer of 1964 and we had stayed in correspondence and every time I came back to D.C. I would see Gary and all that but out of the blue essentially I got a call from Gary saying we're starting this new brand new innovative Ford-funded neighborhood law office experiment here in Washington, D.C., would you like to be the director. I mean it was very unusual that he would pick somebody who had never been in legal aid, never been a public defender, then on the prosecution side. It's only because of what he knew about my real orientation, my real interests that he would even make that call. So I said okay I'll we're having every quarter Bobby Kennedy would have all the heads of the field offices come back in for meetings with him about the organized crime situation in their parts of the country. So he was having one of those about a month later. So I said sure I'll interview for it, I'm not sure what I will do but I mean

this leaving of a secure position in the government to join something that had a one-year grant from the Ford Foundation, so anyway I came back and interview with Ken Pye who was then the associate dean at Georgetown Law School and who was slated to be the chair of the board of this new organization called Neighborhood Legal Services Project. And also significantly with Howard Westwood, senior partner at Covington and Burling who was also going to be a member of the board as it turned out. And it was really Howard Westwood more than anything else that sold me on this. He emphasized how exciting it was going to be, how new it was going to be, what an opportunity to make a major contribution and all that. And so I eventually said yes and submitted my resignation. It took me about a month and a half to wind up things in Las Vegas and I arrived in late November and walked from the Justice Department to the Masonic Temple at 10th and U Street in Washington, D.C., which was the temporary headquarters of this organization that had no lawyers at this point other than, it had no offices or anything. We were starting from scratch in all respects, hadn't even had a board meeting as of the moment I arrived there at the Masonic Lodge. A decision had been made that although they were very interested in having me involved in the program that this organization needed to have a local lawyer and preferably an African American lawyer as its director. So they created a new position called Deputy Director and I was hired for that position and Julian Dugas, a prominent local lawyer, involved in one of the firms that did a lot of civil rights work, was hired as the director. And it proved to be a good team. He knew the legal community very well and he knew what could be done and what couldn't be done and knew where the offices should be located and he did a lot of the setting up of the offices, the leases and all that sort of thing. I was doing an awful lot of hiring of lawyers. What we were striving for was a mix of hot shot lawyers from major law schools and very committed to social change and a mix with them of local, preferably African American lawyers, who were really part of the community. And Julian was looking for the local lawyers and I was looking for the hot shots. And among them was Johnny Weiss who we hired, Brian Olmstead, Marna Tucker was a law student then at Georgetown Law School and she was hired as a summer time research assistant or special assistant actually to Dugas and myself. Later she became as soon as she graduated she became a neighborhood lawyer in this project. We had a very good group of people and

**AH:** Let me interrupt for one second. Let's just go through who some of these people you just mentioned. We'll come back to Howard Westwood. Johnny Weiss works in New York

**EJ:** Yes he is head of legal services for the elderly in New York. He's been in legal services now since December of 1964. So he's been with it a few years.

**AH:** And Marna Tucker, who is a private lawyer in D.C., has also had a distinguished career.

**EJ:** Now former, the future president of the D.C. Bar.

**AH:** And one of the most prominent family of lawyers in both this region and nationally.

**EJ:** Right. And did a lot of work in public interest law for the ABA. I think she was the first person hired by the American Bar Association to develop, encourage, organize pro bono work.

**AH:** That's correct. And she did some work actually for the early days of the Legal Services Corporation around 1970 and '80 on pro bono when the Corporation was just beginning to encourage that.

**EJ:** So a lot of these people and Brian Olmstead whom I just mentioned went on to Boston at some point. I don't know, I know he was there for a long time, whether he's still with Boston Legal Services I don't know but he had about a 30-year career think.

**AH:** Right, that's correct. So these were very interesting early connections in addition, of course, to Gary who has also had a distinguished career.

**EJ:** And Julian Dugas went to have major positions in the D.C. government after he left NLSP.

**AH:** So how many lawyers ultimately did you have there?

**EJ:** Well when I was first approached by this all they had was the Ford Foundation money and it was supposed to be four offices with three lawyers in each, 12 lawyers all together plus the director and deputy director. By the time I arrived they had gotten one of the very early OEO grants and it had expanded to become a 30-lawyer 10-office program. So the notion was three lawyers in each office there was going to be 10 offices around. So we had a lot of offices to set up and a lot of lawyers to hire in a relatively short period of time. And I think we had all ten offices open within, oh, by April or May of '65. So we did get a lot going. I was heavily involved. Howard Westwood was made the chair of the policy committee of our board and I worked a lot with him on developing the policies, eligibility, the goals of the organization, and so forth. And a lot of those ended up being in the guidelines of the OEO Legal Services Program later on.

**AH:** What was your philosophy? There were three experiments that the Ford Foundation funded, one in New Haven, one in MFY Legal Services that was run by Ed Sparer who we'll come back to in a minute, and then the Neighborhood Legal Services experiment. What was the philosophy of the Neighborhood Legal Services program?

**EJ:** Well it was the first of the experimental programs to be a true multi-office program. And to have so many offices in neighborhoods. So there was definitely a neighborhood orientation to it and making the services as accessible to the neighborhood and being as much a part of the neighborhood as possible. There was a fair amount of community organization notion in that because we were part of the United Planning Organization which was the gray areas program that had been funded by Ford but evolved into being the CAP, the community action program, for the District of Columbia. So in a number of our offices were actually located in the same complex of offices with the various social services and so forth and community organization efforts that the UPO was sponsoring. Other places we were in completely separate offices. It's interesting that a lot of people think that things like law reform and all that sort of thing came out of the civil rights movement and certainly for a lot of people there was a lot of analogies but interestingly enough the two people putting together the policies for this program Howard Westwood and myself did not come out either one of us out of that tradition. And he

was a partner in a major D.C. law firm that did lobbying, that did test cases, that did all this sort of thing for corporations, upper income clients.

**AH:** He became quite a prominent lawyer in that firm.

**EJ:** Oh yes he wrote the Civil Aeronautics Act for instance. He was a I guess if it was specialty he had it was aviation, but he had been very prominent, represented major airlines and all that sort of thing. He was a very major part of that, a very big money maker for that firm. But he didn't see any reason why poor people shouldn't have those same kinds of services also. So our policy talked about appellate advocacy and test cases and legislative representation. I had come out of the Justice Department and during that first year had been here the Justice Department here in Washington really functioned largely as a backup center in many respects for the U.S. Attorneys offices around the country. When I was there in Washington I can remember I wrote the large part of a brief that eventually was filed in a organized crime case in Pennsylvania but we had done the research and the writing and that sort of thing. So this was also familiar turf for me. And in any event yes it was a fairly activist kind of policy that we announced, coupled with this notion of making the services decentralized close to the people. An important thing we did was a training program for our lawyers. This was an era of course in which there wasn't such a thing as poverty law or nobody had been taught in law school welfare rights law or public housing law or any of this sort of thing the common problems of poor people. So we put together a training program, got separate funding for that, a quite extensive one and mainly it was coming up with theories that had not yet been argued that could be argued and what the support was for them. So that our lawyers were looking at these problems not just from the viewpoint of we will handle it under existing law from the viewpoint of well we'll hand it under existing law but they were looking at it in terms well this might be a good vehicle for pushing forward this theory or that theory, the covenant of habitability in housing law or man in the house rule in welfare law or whatever it might be. Interestingly a lot of those issues eventually wound up in the U.S. Supreme Court through the efforts of legal services lawyers around the country and a lot of them met with considerable success.

**AH:** So what's very interesting to me is some of your very early work in Neighborhood Legal Services Program was developing in you the very theory we're going to talk about in this interview, the very kind of directions and policies that you tried to do when you were at OEO legal services and you had been through this in a very practical way.

**EJ:** As it turned out it was good preparation for the job I was to undertake because we had dealt with those kinds of problems and those kinds of issues at the local level before going on to this other level. One of the most interesting sessions we had was in landlord/tenant law where we hired the most prominent landlord law lawyer in town to teach our lawyers about landlord/tenant law and all of the things that had not yet been settled in landlord/tenant law. It was as good business for him as well as a very educational experience for our lawyers because then they would bring those cases and he would get paid to defend them but that was an interesting mutually advantageous arrangement.

**AH:** That's interesting. When I was a Reggie which we'll talk about too, my training at Michigan they brought in probably the top consumer lawyer on the creditor side, the debtor's side to

teach us about credit which I actually formed a friendship with in Houston in many trainings later on. Very interesting analogy. And you were in Neighborhood Legal Services for about a year.

**EJ:** I started in late November of 1964 and I left in October of 1965. That was to go to the OEO Legal Services Program as deputy director.

**AH:** Before going there was there anything else that we should talk about at the Neighborhood Legal Services experience that helped set a framework for your later work?

**EJ:** I can't think of anything right now but I'm sure I will later on.

**AH:** We should come back to that if we do because it's very interesting because Ed Sparer, who is my mentor, had a very similar formative experience at MFY legal services that affected how he viewed a lot of things and always referred back to that.

**EJ:** Well I can tell you this, that I got the first inklings of the kind of opposition that occurs when you're successful let's put it that way. Every once in a while particularly with some of our more adventuresome lawyers like Johnny Weiss I would get a call from a judge or from some lawyer or something that complaining. I remember there was this one judge in landlord/tenant court said your lawyers are trying to take every \$15 case up to the U.S. Supreme Court and of course that is what we thought they should be doing. But I didn't say that but I had to do a little smoothing over every once in a while there would be some complaint coming in that direction. And Brian Olmstead, who I mentioned before, had a little bit more violent experience with that. He had succeeded in getting a last minute stay of an eviction and went charging to the home where the eviction was actually in progress with the order staying the eviction. The landlord was also there supervising his people carrying out the furniture and he got very, very angry when Brian showed the marshal this stay order and stopped the whole process and got the furniture going in the opposite direction and actually physically assaulted Brian and threw him to the ground. The marshals then interceded of course but it showed that it wasn't always going to be smooth.

**AH:** A great harbinger of things to come.

**EJ:** Yes.

**AH:** Well let's turn now to the early days of OEO Legal Services and just set the background. Other people that we've interviewed in this series have talked about the efforts that went into the early thinking, persuading Sergeant Shriver, persuading the ABA, the leadership of Lewis Powell, John Kaminsky, Bill McCalpin, John Robb and others in the American Bar Association to agree to support the services and then the effort to try to find a first director of OEO Legal Services. And ultimately the hiring of Clint Bamberger, a prominent lawyer from Baltimore, trial lawyer from Baltimore, to be the first director of OEO Legal Services. So how did you get there and what's your relationship to all of that earlier

**EJ:** When most of that was occurring I was busy helping set up ten offices, hiring 30 lawyers and all that sort of thing. But I was aware, especially through Gary what was going on. Gary by that time, by the way, had moved over from the public defender's office, he was actually deputy director of the United Planning Organization which I explained with the CAPs so we had daily contact as far as my program was concerned and I had some conversations with him about what was going on and there was a June conference cosponsored by the Attorney General, OEO and ABA, this is after June of '65, which I attended so that was when they really got serious about looking for a director for the OEO Legal Services program. But as I say I was not involved in the business of getting the ABA approval and that sort of thing. The sort of next time I learned about the OEO Legal Services Program other than getting the grants that we did get from OEO was when I got a call from Clint Bamberger saying that Gary Bellow, again, had suggested that I would be a good candidate to be deputy director of the OEO Legal Services Program, his deputy. I had subsequently learned that he had tried to hire Gary as deputy director and Gary had said no I think I still have a lot of unfinished business as UPO but I think that Earl Johnson would be a good deputy. It was sort of a limited group that they given the criteria they had it was a limited group of people that they could select from because they didn't want anybody out of the then existing legal aid programs who were the logical ones in one sense because they had experience but they were bound and determined that this was going to be something different than traditional legal aid. And Clint supplied the sort of private bar credibility that they wanted and they didn't want to hire another somebody from the private bar because that wouldn't add anything so they were really looking for somebody who had some experience in delivering of legal services but who at the same time was not part of the existing legal aid movement. And so there weren't that many other people that they could have hired. I guess Ed Sparer would have been a possibility conceivably but I was there and had run a multi-office program so anyway Clint we had a very nice lunch and about three days later he called and said will you take the job. So I spent a couple three weeks closing out neighborhood legal services project and went over to OEO Legal Services, which at that point consisted of Clint, myself and a couple of consultants, Bruce Terrace and Mike Rowe and Kitty Chayes

**AH:** Who was that woman in her 70s or so at that point

**EJ:** Who was the mother of Abe Chayes who had been heavily involved in getting the OEO Legal Services program started. So in any event we then set out to fix that. And Clint had a notion of what he wanted. We had I think seven regions plus central staff to pick. And he had a sense of the kind of person that he wanted in the regions in particular. That kind of person was sort of like what I've described before as a junior Bamberger, someone out of probably an associate of some major law firm but that would have some credibility with the bar because even at that point we perceived that the if we were going to have resistance in creating these legal services programs at the local level and particularly if we were going to in some ways produce something that was going to be different than legal aid had been the persons to be convinced would be the local bar. In large part we did not end up with those, a great variety of people but almost none of them fit that category. Some of came out of, none of them came out of legal aid except Ted Mitchell who had been head of legal aid on the Navaho Indian Reservation but other than that I think all of them were somewhere out of private practice, some were out of government agencies, an assortment of people but very capable people.

**AH:** In the regional offices.

**EJ:** In the regional offices right. And then at the staff level the one baby Bamberger we did get was Chuck Edson who came out of Bill McCalpin's law firm in St. Louis and had been an associate there. And who has gone on, as you know, to be a prominent housing lawyer with the – I think he's with Peabody now, but he was with several other major firms along the way.

**AH:** At that time some of the battles we're going to talk about within the OEO bureaucracy sort of hadn't yet occurred. How were you organized at the very early stages here and how much independence did you think you had?

**EJ:** That was actually a struggle from the very beginning because Community Action Program was the umbrella under we were that was the major division of OEO and probably had half the budget or more of the organization. And those that were within OEO that were really committed to the CAP ideal looked upon anything where the federal government telling the local communities how they should spend any part of their money was an anathema. They thought that the community action program each community would decide its own priorities its own programs, etc. So when Sarge Shriver started the

**AH:** The first director of the Office of Economic Opportunity

**EJ:** That's right, the first director of the Office of Economic Opportunity when Sarge decided to started some national emphasis programs, Head Start, Legal Services program, Upward Bound, that was not popular with a lot of the people in the Community Action Program and so there was a constant struggle for both money and for independence of people in the regions and of ourselves almost from the very beginning.

**AH:** Why don't we come back to that in a second. I just wanted to set the scene. So you have come and you and Clint I think very early on set a goal for the program in terms of what you wanted to accomplish I think by June of '66 in terms of grants. And then you had to try to persuade the legal aid movement about what you were trying to do, you had to persuade the bar, the local bars about what you had to do and you had actually make these grants. So that's what we'll go through right now. So what was the goal you were trying to accomplish in the early days? There's some November 16 memo from you outlining the directions to go to Clint which he essentially bought into. Not that he didn't have a say in this but you and he were working together on this so what were you trying to accomplish and then let's talk about what you had to do to get there.

**EJ:** Right. Well we were trying to establish about a \$50 million-a-year program and were trying to get there as quickly as we could. We had the sense that we needed to get as far as we could as fast as we could before the money ran out because we felt that within we didn't know what the period of time would be but at some point the budget was going to stabilize and we weren't going to be able to advance any further than that. So we set a goal of trying to get as many programs going as possible. And I think we were trying to set up as many as 150 the first year, I can't remember for sure what the exact target was but we were trying to move.

**AH:** Well your memo says 75 by June 30, '66 so that would have been roughly the first that was the fiscal year the government was then a July to June fiscal year before they moved it.

**EJ:** One of the consequences of that was that we needed to as much not as much as possible but certainly to a large degree make grants to existing organizations, i.e., existing legal aid societies and then hope that we could convert them to the substantive goals we had the policies we had later on. So a good deal of our effort was spent trying to cultivate interest in the legal aid societies in taking grants from us.

**AH:** Most of them were charitably funded?

**EJ:** Most of them were committed to being charitably funded. So we went in November of '65 we went to the annual meeting of the National Legal Aid and Defender Association, I think it was in Phoenix but I'm not sure

**AH:** Scottsdale.

**EJ:** Scottsdale, yes, to try to there was a fair amount of them that felt that this federal government would be a bugaboo and so forth so we had to try to convince them that the program we were talking about was something they should gladly become part of and it was an interesting about four-hour session. Well it was more than that because it was the morning and the afternoon that was the whole day essentially of that conference with all of this was a plenary session so there were several hundred legal aiders there. And Clint gave his speech and before any questions could even be asked of him the head of the board and the staff director of the D.C. Legal Aid Society, not the Neighborhood Legal Services, came charging up to the podium and gave this diatribe against the legal services program the federal government and so forth and you know in saying condemning the program I had headed, OEO legal service, pardon me, Neighborhood Legal Services project here in Washington, D.C. Then there was a lunch break and then I was scheduled to give the next speech so I delved back into history and talked a little bit about how the notion of the federal government and government funding was around from the very beginning and had been endorsed by people like . . . Root and some of the other people who had been so involved in the creation of the legal aid movement and had been supported by Chief Justice William Howard Taft and that sort of thing. So and then Clint went back on for questions and he did a masterful job. And by the end of that session which as I say went on until 5:00 o'clock or so had turned the tide in the room it was clear and the next day there was just a parade of people coming in asking about how they could get applications in and all that sort of thing.

**AH:** Who were some of the other players at that meeting, like the head of NLADA, the president of NLADA and I think Howard Westwood was involved in some of that.

**EJ:** Oh yes Howard was very much involved. He also gave a speech at that thing so that helped temper the

**AH:** Teddy Voorhees

**EJ:** Ted Voorhees was the president of the NLADA at the time. He was a prominent, he was with Decker, Price and Rhodes I believe, a big law firm in Philadelphia. This was at a time in which the NLADA was a substantially different organization in the sense that its leadership was largely big firm lawyers, the president of the NLADA was almost always a big corporate lawyer and usually someone who was very heavily involved in ABA politics and in fact a number of them went from being president of the NLADA it was like a stepping stone to be president of the American Bar Association, so it was very much a national bar association oriented organization at that time. And Ted was very supportive from the beginning so he was very supportive of legal services and the OEO Legal Services program and having the federal government provide funding and all that. So he did whatever he could to persuade behind the scenes. So from that time on we had very good luck with the legal aid society. The next

**AH:** Let me step just one second, I really can't resist this. In Bamberger's speech before his four hours of questions and answers I can quote many aspects of it from your book, Justice and Reform, but one that has always struck me as sort of highlighting how the early world was viewed by you and Clint was that Clint said the purpose of OEO legal services is quote to marshal the forces of law to combat the causes and effects of poverty unquote.

**EJ:** Correct that was an accurate capsule statement that we felt the mission was.

**AH:** So that was when you look back on that that was heady days in some sense from how you were thinking but it was also the milieu of the time as I recall right, I was just in law school then.

**EJ:** And you have to understand also that was the mission of OEO not the law part of it but we were part of a broader panoply of services and programs that also had the mission of trying to overcome the causes and effects of poverty. So OEO would not have been interested, it would not have spent one dime for a continuation of the as they were viewed at least of the traditional legal aid societies and what they did in the services they performed. At that moment in time and for several years later OEO would not have been interested in funding anything that didn't have the mission that we described. So if one were to look at it even as a self-serving bureaucrat that's the mission that . . . Now we weren't self-serving bureaucrats but I'm just saying it was having that mission was what made it possible for us to get adequate resources or at least some resources from OEO.

**AH:** Sorry I interrupted but I think I don't know if we were talking about the legal aid movement I don't know if you were finishing that and then we need to talk about the local

**EJ:** Well I was just going to say the next obstacle that we had to face was the local bar associations were in many times in communities where we were trying to even when we were funding a legal aid society but we were insisting on certain policy changes probably the biggest policy change that caused the most consternation of local bars by the way was the notion of having lay people on the board, when I say lay people, low income lay people, client eligible people on the board of the local program. And we had to face that resistance in community after community. And we also had to face the opposition the outright opposition of the American Trial Lawyers Association initially.

**AH:** Why were they opposed?

**EJ:** I think they looked upon this

**AH:** At least Al Cohn was opposed

**EL:** He was. Al Cohn was the president at that time but he had gotten his board to oppose also but he would go around the country making speeches against the program and where localities where we were trying to get something going and where there was any possibility of any local bar opposition he would march in there and try to organize that opposition. So he was very avowed foe. And I think it was some concern that this program either immediately or eventually would be competition for the clients that they were because they obviously served poor people as long as those poor people had a personal injury severe enough that they could earn a contingent fee out of it. Now we of course one of the early policies we had was that we weren't interested in representing people who could get representation on the basis of a contingent fee but it took them a while for them to believe that. There was also in Philadelphia a legal challenge to the program that I actually ended up having to testify there but which resulted in a resounding written opinion supporting the OEO Legal Services program and its legitimacy which we were able to use subsequently because one of Cohn's argument's was that this was somehow illegal because it involved a third party paying for the service given to a client and that sort of thing. That kind of legal challenge went by the wayside with that Philadelphia case.

**AH:** Do you remember there was a southeast regional conference I think, if I recall from your book correctly, involving ATLA and the set of meetings that occurred either around there or related to there negotiations with a number of prominent trial lawyers, one of whom was [END OF SIDE ONE OF TAPE] . . . Michigan, do you remember that whole scene. I may have the sequence wrong

**EJ:** Yeah, there was a big meeting in Florida where I spoke and Al Cohn spoke. This was a big conference on legal aid and legal services and so forth. Bringing local bar members from all over the state and all that and we debated and we ended up funding a lot of programs in Florida that's all I can say from that one. But I think what you're referring to is that I actually met the next annual meeting of ATLA and met with seriatim with a bunch of the board members and we were of course the new president was going to be coming in and all that so anyway the board ended reversing the policy that Cohn had gotten through a year before and came out in support of the OEO Legal Services program and part of that deal or arrangement was that they would have a seat on our national advisory committee just like the ABA did and the NLADA did and that turned out to be Jack Fuchsburg who was a past president of that association who became a very firm supporter of that and later a Supreme Court justice or Court of Appeals justice in New York. But so that ended ATLA's opposition. So then it was just the local bars and it was sort of one by one. I remember when California Rural Legal Assistance was trying to be formed and get money from us the California state bar sent I think it was a letter of opposition so we had work with them for while and to

**AH:** Which in hindsight is sort of surprising

**EJ:** I know.

**AH:** Given the tremendous support of the California state bar really for decades.

**EJ:** That's right. And I think it just took some education for them. They quickly became supporters, the next year they were supporters but there was that initial opposition. We sort of had a deal with Sarge Shriver that is that he would sign any grant we recommended including ones in which there was political opposition or bar association opposition. He just wanted us to make it as easy for him as possible by trying to neutralize or counter the opposition that might exist from the local bar or the political opposition that might exist. So we would try to drum up support that could counteract the negative input that was coming from wherever it was coming. And generally we were able to do that so I think as I said we were aiming for you said we were aiming for 75, we ended up with 130.

**AH:** That's right, 130 grants and some 25 additional grants to law schools and bar associations and others. And the program went from \$5 million to \$25 million by really just this short period of time.

**EJ:** That's right. But it was really from I think we were making really our first grant other than the one to the D.C. program I think our first grants were in January, so really in six months. You have to understand we were working 7 days a week, 14 hours a day, it was like a war in many respects in terms of

**AH:** Let's finish this sort of segment by talking just briefly about some of the kinds of conflicts and issues that you encountered when you were dealing with the local, you mentioned some of the local bar opposition to lay people low income lay people on the boards of directors, but there were other issues and other kinds of tensions as well in the grant-making that was going on during this time, this very short period of time where you essentially made all these grants, it's an astounding record when you think of it. And your book describes this a little bit. There were conflicts, for example, between some of the community action agencies and the people applying for the grant, local government sometimes, dissenting members of the bar that's what I

**EJ:** Well certainly Chicago was a good example of where the local government was a problem because the local government was Mayor Richard Daley who was a rather potent political force and he was a little concerned about the degree of independence which we were insisting upon these lawyers having and their ability to challenge local government as well as other persons or entities that might be on the other side of law suits from poor people. That took some rather high level negotiations, it's one of the few situations in which Sergeant Shriver himself became involved. But we ultimately got what we were asking for and got a program going there. We set up actually two separate programs. We funded the Legal Aid Society. We also funded a brand new entity and managed to work out a suitable arrangement shall we say that allowed them the independence they needed. Florida Migrant Legal Services was a very tough go because there was the growers having, Florida Migrant Legal Services was starting after California Rural Legal Assistance had been existence for a few months, so the growers down in Florida knew what was in the offing. And so they exerted some pressure on Congressmen from that area to write to Sergeant Shriver and say that this shouldn't be funded and this is bad and

all that sort of thing. So there was a lot of . . . political as opposed to bar association opposition. There was a little bit of bar association opposition which I made a sort of tour down there going to various local bar associations and talking to them and getting them eventually on our side and they helped to intervene with the Congressmen. And so we ended up eventually being able to make the grant but it was delayed probably close to a year with many meetings with Congressmen trying to assuage them and indicate why this was important and why that some of their clients were poor people too, not their clients but their voters and eventually they were persuaded to come around.

**AH:** At this point were there any serious opposition from state government that you encountered in this early stages . . . .

**EJ:** I don't think we any vetoes in the first set of grants. I'm thinking

**AH:** I think that's right, I

**EJ:** It was after there was some success by these programs that we began to get that kind of problem.

**AH:** Some of the issues that came up and we'll just stop in a second here, obviously besides whether there would be a program there were issues around who would control the agency, what type of delivery system would be set up, eligibility criteria, the scope of representation, the salaries of attorneys, can you talk a minute or so about that.

**EJ:** Well we'll have to do that later, it's too long an answer.

**AH:** All right. Why don't we close this part of the interview and we'll come back in a few minutes.

Continuation of Interview with Earl Johnson

November 2, 2002

Tape # 2

**AH:** . . . and finish up a little bit about some of the issues in the grant-making world and then we're going to go on to talk a little bit about policy making, the national guidelines, the things you did without using rules and regulations, a little bit about the OEO bureaucracy and finally talk about some of how you took your national goals and carried them out. So we're going to try to go in those sets of directions. Just to set the stage for understanding what we're about to do, between January 1, '66 and June 30, '67 which is only a year and a half, Clint and you and then when you became director you funded 300 programs, opened 800 new offices, funded 2,000 new lawyers and had developed a program of \$42 million with in that year and a half period of time from scratch essentially in large part. It was a phenomenal record, it seems to me, and a phenomenal bureaucratic performance if you want to put it that way. But in making these grants which was we've just talked about with the record accomplished there were a lot

of issues that had to be addressed and a lot of players that had to be brought in line and we've talked about the local legal aids and local bar associations but there are others as well. So first let's talk a little bit about some of the issues that you had to confront when you were making these grants. And just what it was like in some of those and then we'll go back and talk about the guidelines and some of the policies that framed some of these debates that you had to face on the local level.

**EJ:** As you can imagine most of these involved issues that were of particular interest to a given locality. For instance, in North Carolina I had to have a meeting with the heads of the North Carolina bar and some of the major local bars that were very concerned that this was going to be a civil rights program. They were very concerned that this was just going to be more enforcement of the civil rights laws, sort of a way for the federal government to get under the tent and bring a lot of law suits. I had to let them know that there might be some cases that poor people brought to us that would involve civil rights issues but that wasn't the major thrust, I mean the major thrust was poor people but we certainly weren't going to foreclose our programs from bringing a case where what the legal problem what the person faced was the result of racial discrimination but that we were not a replica of the civil rights division of the Justice Department. Persuaded some, didn't persuade others. We had some difficulty in getting to some of the North Carolina cities but we managed to get into Durham and Winston-Salem but there were some others that it took another year or two before we were able to get into and the source of the resistance was that, however it might have been couched in other terms they were concerned about the civil rights part of it. You know I'm trying to think another place in the south that was Louisiana and we had it was either Shreveport or Baton Rouge where there was a big meeting of finally ultimately a big meeting with the full bar and our regional guy down there, I wasn't there for this one, I heard about it but our regional guy down there had to spend about three hours talking to them in a big mass meeting and that at the end of the meeting one member stood up and made a motion that the bar should oppose the Legal Services program and there was no second to the motion and we got the program and I can't remember whether it was Shreveport or Baton Rouge, it was one of the major cities but not New Orleans. I always characterize that as being the opposition in that city ended not with a bang but with a whimper. I think I've already talked about Florida. As you can see an awful lot of the local problems were in the south not exclusively.

**AH:** It's interesting because over ten years later when the Legal Services Corporation was starting its expansion program, '77-'78 the major problems they encountered were in the south and the major areas of expansion initially were in the south and they had to cover large parts west but there was much less opposition than in the south.

**EJ:** Yes. We did not succeed in penetrating the south nearly as much of the rest of the country because there was much more opposition down there.

**AH:** Let me just a couple of things. Clint left at some point during this period of time that we have been talking about and

**EJ:** He left in June of I think precisely it was June 8, of 1966. He had been there about eight months or something. He left to run for Attorney General of Maryland is what he left for. And

so I was at that point five years out of law school, I was at that point 32 years old and suddenly I had this big program that I had

**AH:** Was your selection at all controversial?

**EJ:** Well I don't think it was controversial. No, I was acting director from then through it would have been say September and there was this parade of potential directors that went through, a former president of ATLA whose name escapes me, but from Florida was one that was considered. They had come up and they would interview with me and a bunch of other people and eventually with Sarge Shriver. And for one reason or another either they chose not to take it or Sarge Shriver didn't like them. Then toward the end of this process a very well politically connected lawyer from Texas who had very good White House connections, who had a wealthy wife who had contributed a lot of money

**AH:** This was Lyndon Johnson in the White House

**EJ:** Right Lyndon Johnson in the White House who had contributed a lot to Lyndon Johnson's campaign and to the Democratic party came through wanting the job and Shriver got scared, he was afraid that he would end up with somebody like this as the director of the OEO Legal Services program, someone who was neither committed nor knowledgeable nor had any qualifications for the job was not someone who was revered figure in the bar or anything like that, no reason for having him other than he was politically powerful. And he first said no to this guy essentially and the next day called me and said he wanted me to be the director of the OEO Legal Services program and I think informed the White House that the position had already been filled so they could stop sending people over. But that's the process that went through and the political explanation for why I ended up with the job.

**AH:** Let's move on to sort of the policy making at OEO that was sort of going on at the same time some of this was happening and that set the frameworks for this. And let's first talk about the guidelines for legal services programs, what they were, what these were all about and the process of ironing these out and discussions with the national advisory council.

**EJ:** Yeah I think as preliminary to that we really have to talk about the national advisory committee which we really haven't mentioned thus far and was such an important part. It was an essential part of the negotiations with the American Bar Association in getting the American Bar Association's endorsement initially there was a commitment by OEO that there would be this national advisory committee and that the president and president-elect of the ABA would be on it, the president of the NLADA would be on it, and so forth. So this national advisory committee was formed and shortly after I joined the program as deputy had their first meeting. It also had a number of other prominent

**AH:** Why don't we talk about who was on this first national advisory committee. It's an extraordinary group of people.

**EJ:** Okay. Yes. The president was Ed Kuhn at that time, the president-elect was Orison Marden who was a prominent New York lawyer, White and Case I believe was the law firm, and he had

been president of the NLADA a few years before that so he was one of these that had been involved in legal aid for a long time before we became president of the bar or at this point president-elect. But there was Jerry Shestack who had become president of the bar like 25 or 30 years later.

**AH:** WE did an interview with Jerry Shestack by the way that's in the oral histories here.

**EJ:** Good. Bill McCalpin was on it, Professor Soia Mentschikoff from the University of Chicago Law School was on it, there was an Hispanic judge from Los Angeles, Jack Newman, despite the name he was Hispanic, Professor Hal Horowitz from UCLA Law School was on it, Gary Bellow was on it, at that time Gary was I think deputy California Rural Legal Assistance if I'm not mistaken. He may still have at that moment been at UPO, he may still have been at UPO. Yeah he was, he was still at UPO. I'm trying to think of some of the others.

**AH:** Jean was Jean

**EJ:** Jean Cahn was on it. And Patty Murray was on it. And Elizabeth Wickiman was on it who came out of the social welfare movement. It was a very distinguished group and a very interesting and they brought shall we say very divergent perspectives to the table. They played an important role in many ways. Number one, of course they helped us develop the policy but once they had approved it, they gave great credibility to that policy among in the bar and elsewhere in the country. Another important role they played it became particularly important later on they also gave us some credibility and some bargaining power within the bureaucracy. We could use their imprimatur to influence Sarge's views and allocations of money and so forth.

**AH:** Why don't we come back to that. I want to cover that and there may be some other roles. We'll come back to that and talk about it in detail here.

**EJ:** So we would prepare, Clint and myself primarily worked on the guidelines, we would prepare a draft section and then it would be submitted to the national advisory committee, they could comment and so forth and then we would redraft and eventually come up with a version that they would approve. The issue of lay people or not lay people poor people on the board which was probably the most controversial it is certainly the issue we spent the most time on. And it wasn't that any of the bar representatives on the board had personal opposition to that but they were very concerned that it would be very hard to sell to the local bars and that having it in there would be counterproductive in terms of our goal of trying to get as many programs going as soon as possible. And Clint was pressured a lot to remove that particular issue from the guidelines or that requirement. It was set forth as an ironclad requirement. And he refused to budge. And to his great credit I might say he refused to budge on that issue and that remains there. And as it turned out it became I think a symbolic issue and became a useful symbolic issue as marking this as something different in requiring the local legal aid societies where it was a local legal aid society to realize that they weren't just going to get a blank check from the federal government, that they were going to be expected to become somewhat different and this symbolically was the biggest step for them to take and it was important that

they be required to take that step. I think it proved to be very helpful, although there were a few communities that turned down the money as a result. Now very many though.

**AH:** These national guidelines these were not regulation in a formal sense.

**EJ:** No, it never went through none the formalities required to make them formal regulations. They weren't required to be at that point in time because they were just guidelines to what had to be covered in your application and sort of you are asking for money from the federal government and here is the terms on which you would get the money. It wasn't telling you after you had the money what you were doing, it wasn't a regulation in the sense of a regulation it was merely you want the money this is what you are going to have to do in the future.

**AH:** Besides the low income community on boards the sort of basic framework of the guidelines as I understand it were sort of four principles and then there were big issues that were imbedded in these principles. One was you would accept all categories of cases, that there was limited criminal representation, very limited, you would have separate boards from the community action agencies from the local community,

**EJ:** That's right that was the independence, that was in some places we had to persuade the community action programs to accept that particular but that was an important thing, the independence. That was one of course that the national advisory committee and the bar representatives on it were very supportive of, I mean that was key to them.

**AH:** And neighborhood offices was another one, which comes out of our old neighborhood legal services experience.

**EJ:** That's right, decentralization, bringing it down to the neighborhood.

**AH:** Another issue that was discussed was the avoidance of a national means test and I think somebody with in the OEO bureaucracy had proposed a national means test, the guidelines rejected that.

**EJ:** That's right. We rejected it, we rejected it because we knew that the standards of living were so different in various parts of the country that to say that a certain amount was the maximum somebody could earn to be eligible in New York City would be so different from a comparable strata of the income levels in a southern town or village or rural area that it made no sense to have a uniform national means test. \$3,000 a year in New York City wouldn't buy half what \$3,000 a year would buy in some rural area of South Dakota or Texas.

**AH:** And then one of the other issues that you discuss in Justice and Reform was the sort of what everybody thought was in the guidelines but turned out at one point not to be, the notion that you had to advocate for reform and that you had to represent low income organizations, poor people's organizations, could you describe a little bit about that combination of issues.

**EJ:** It was interesting because we had oral discussions with the national advisory committee about you know this program has got to be able to do that kind of thing. This is not just the

continuation of legal aid as it existed before. But it had not been put into the guidelines in the next to last draft essentially and this was pointed out to me by Ken Pye when he was, at this time he was one of the network of consultants that we had that we were using to send out to localities to develop programs and he was

**AH:** He was what associate dean

**EJ:** He was associate dean at that point at Georgetown and he came by one day. We were on some consultant issue we were talking about and I showed him a copy of the draft guidelines and he said you know there is nothing in here about the stuff we had been doing that we put into our policies at NLSP about test cases and legislative advocacy and all this sort of thing. So I said you know you're right so we put it in and there were no more meetings of the national advisory committee scheduled before this thing was supposed to go to print so we mailed it out and asked for comments and nobody had any problem with it, so it became part of the guidelines. But it's interesting that that would be in some sense an afterthought even though it was so much a part of what we were all about.

**AH:** What is your sense of you were starting to talk about this and I pushed away from it for a second, but let's go back. How did the guidelines influence your grant-making and how did the national advisory council and others use the guidelines to carry out this sort of national policy that is now reflected in these guidelines. It was a change in many respects from the legal aid philosophy and other philosophies that were in competition at the time for what this program should be.

**EJ:** Right. Well the guidelines were widely distributed. They were sent out to bar associations all over the country, all the legal aid societies and of course to all the community action programs and to anybody who wanted to apply for a grant got the guidelines and the guidelines told them what had to be in their proposals essentially. We also wrote a companion document called How to Apply for a Grant which went into much more detail and including much more detail about law reform and that part of the thing about test cases and the other advocacy we expected them to have. It also had this formula the requirement that there be a minimum of two lawyers for every 10,000 people in the area that is going to be served. So the smallest neighborhood office that we would fund in a given community would be two lawyers for 10,000 people which eventually became the target for the minimum access for the Legal Services Corporation and why it's phrased as two lawyers per 10,000 because we thought a one lawyer office wasn't economically or cost effective way to deliver legal services.

**AH:** When we do an interview with Tom Ehrlich we'll talk about how that all started and how

**EJ:** Why it wasn't expressed as one lawyer for every 5,000 instead of two lawyers for every 10,000. That's the history. It was written that way for that reason and somehow got ensconced in policy later on.

**AH:** Well let's turn to

**EJ:** I just want to make one other point about that How to Apply thing never went through the national advisory committee. That was just written by staff but distributed and also became very influential in the applications that were sent in.

**AH:** In addition to the guidelines, you also in these early days made three decisions about what you were going to do or the direction of this program that still are key today in our legal services system. The biggest one being law reform which I want to talk about, the containment of Judicare as the second, the lawyers on boards of local legal services agencies, how many lawyers there had to be and who would appoint them was the third set of decisions. So I don't care what order we go in but why don't we talk about those three sets of issues. Why don't we start with law reform. You were the one that has been labeled as the person that thought up law reform, labeled that. But you certainly had lived with that characteristic that Earl Johnson and law reform OEO Legal Services were sort of all in one phrase so to speak. So what was the history of this and how did you come to this and what do you mean by and what's the real truth here.

**EJ:** Well first of all that was the last of these three policies, these major policies that sort of evolved to be developed and to be announced. You have to understand that there were I certainly didn't invent either law reform myself but I did announce it as a priority for the program but that was in 1967 I think March or April or whatever it was of 1967 so that's fairly far along in the history of the program. There were a lot of people who were advocating that kind that we needed to put more public emphasis on that part of what legal services was doing. Or we were in great danger without a focus, having no focus and [gap] . . . nothing or very little with regard to dealing with the causes and effects of poverty. I think we were very naive when we first starting funding all these programs because we were putting so much more money into civil legal services for the poor than had ever existed before. I mean when we started funding the total combined budgets of all the legal aid programs, the charitably funded legal aid programs in the country was a little over \$5 million. We funded \$25 million the first year and by a couple of years later we were looking at over \$40 million a year actually annualized \$50 million annualized budgets. So I think we thought we could do everything. We could put a neighborhood you know this huge expansion of money by comparison, we hadn't realize how far back we were starting from but anyway, all this money that we would be able to do everything, you know we would be able to have a neighborhood office in every neighborhood and they would be able to provide all kinds of representation to poor people, handle all their problems and still have time to do test cases and legislative advocacy and appeals and whatever. It became apparent after about a year in operation that this wasn't true at all, that all the neighborhood offices were being overwhelmed with clients and if they kept doing number one they couldn't handle all the ones that were coming to them but if they were to handle all the ones they could with each problem one at a time they would never have time to do any of this more strategic work and more socially significant work. So a number of our consultants for instance and some of our staff members began to say we've got a problem here we don't have any focus and if we don't pick a focus we're going to be in trouble and a lot were urging some kind of not necessarily using the word law reform, although some did, advocating that we put an emphasis on that kind of work, the legislative advocacy the test cases and so forth. So a Harvard conference provided an opportunity to make a public declaration that that was going to be the priority and so I gave a speech there and that speech backed up by a lot of other

measures became the priority not the sole priority but the prime priority for legal services. I even in the speech I made it clear that doesn't mean we're stopping doing other things entirely but that we were going to make sure we reserved enough resources to accomplish that.

**AH:** What were the choices that led up to that I mean you had presumably some choices, you talk a little bit about this in Justice and Reform but you had some choices of organizing principles besides law reform that you rejected

**EJ:** That's right. There were some that were urging that we put the emphasis on community organizing, that legal services lawyers essentially stop or do very little actual legal representation of poor people and spend their time working to organize the communities and to represent the organizations that were created or that were already existed. There were those that advocated that we become strictly a service kind of thing and become part of a panoply of services being . . . that was really urged by . . . people at that time I can't remember if there was anybody who was urging that as the alternative to law reform. The choice of the words law reform as opposed to some other words that might have been used to describe the kind of advocacy we were going about was the first place it was . . . law reform . . . test cases all the other means by which you would accomplish it. The other was at that time there was actually a canon of legal ethics that told lawyers that they were supposed to engage in law reform not just legal services lawyers but lawyers in general, that when as a result of their practice they discovered there were defects in the law there was a canon that told them they had a duty to try to change or make it better. So this was a canon that sort of backed up the term and so that is the reason I used the term.

**AH:** Now we looked a little bit historically in the three experiments, New Haven, Neighborhood Legal Services and MFY Ed Sparer and I think Elizabeth Wickiman was involved a little bit in that and Jean Cahn in New Haven and you and others in D.C., the law reform idea came in many respects out of some of the work that Ed was doing

**EJ:** Absolutely. I mean we borrowed, in Neighborhood Legal Services in Washington we borrowed heavily from some of the stuff that he had been doing. There is no doubt about it that I don't know if you could call it his wing of the legal services movement was certainly the wing that was urging that kind of advocacy as being what we should really be all about. And be spending a great deal of our resources on. No doubt about it, I mean I give great credit to Ed Sparer for really being the first proponent of that kind of advocacy that was actually doing it at least.

**AH:** It seems just interesting to me that two or three years later here you are the director of OEO Legal Services telling at this Harvard conference essentially all the grantees that this is the framework we are going to operate in not the only one but a primary emphasis will be given to this. It's phenomenal to me in some ways the speed at which these grants are made and all the stuff that we've talked about that unfolded here.

**EJ:** We were learning as we went along, let's put it that way. We gave the grants and then we had to deal with how we made this set of grantees an effective means of dealing with poverty.

**AH:** There were two other issues that you had to struggle with that were very important to the future of this program, one was Judicare. Why don't you tell us a little about the story of that, how you came to limit you and client Judicare.

**EJ:** Well we got this grant application from the Wisconsin State Bar Association initially to have their entire state the legal services delivery in the entire state of Wisconsin be through what they called a Judicare program, they were borrowing a Medicare term . . . would have meant private lawyers doing all the representation and then billing the federal . . . for the work they did, that was the basic concept. They were modeled largely on what was the primary way of delivering legal services in England. And in any event we were immediately concerned that could sweep across the local bar associations and even through the general practice section of the ABA even become the policy of the ABA, that is to sweep across the country and all of these programs would say gee that's the way we should do it get rid of these legal aid societies, get rid of the legal services local legal services staff programs and gee this is we'll get some money out of this. So we were really afraid that it would take over you know. So we decided on a well we'll . . . in some counties in Wisconsin, so we turned it from a statewide program to a multi-rural county program in Wisconsin and we'll see what the results are. In the meantime we will fund programs other existing legal aid societies and other staff centered programs elsewhere in the country. So we bought about a year and a half of time during which essentially we made most of the grants that were going to be made.

**AH:** You had a few other grants, Wisconsin was the largest

**EJ:** The largest. We did do it selectively in a few small ones usually as an adjunct to staff program. Maybe for a neighborhood or where they had a sparsely settled area with even the service area of the program. There were very few of them.

**AH:** Well that was certainly a fundamental decision given the way the legal aid is delivered throughout most of the developed world, England, the continent

**EJ:** And my own feeling now is that ideally we would move eventually to a mixed system that mixed . . . with in some way with substantial private lawyer components but that's when you have a lot more resources than we do currently in the United States. It wasn't that we opposed the notion, it was the fear . . . that it would take over and that and we knew that it would not be as effective as a salaried staff program could be in law reform or what law reform stood for which was all the different focused ways of trying to make the law more favorable to low income people and make the legal system more favorable to poor people.

**AH:** One of the other issues you struggled with and we talked a little bit about earlier but let's just focus on it in a broader way, which was the role that lawyers would play on local boards of the legal aid programs that they were funding. Would there be a majority of lawyers, would they be appointed by the local bar or elsewhere. Why don't you describe sort of the controversies and policies that sort of evolved on that issue.

**EJ:** Yeah, this was another source of discussion on the national advisory committee. Eventually in the negotiations over having . . . people on the board agreed to a basic concept that a

majority of the board would be lawyers and that would also be a . . . and that helps get the national advisory committee to sign off eventually on the idea of poor people on the board. But we also made it clear that that didn't mean all the lawyers that were on the board would be appointed by the local bar association. Some of them might be appointed by the ACLU or the community action agency but as long as a majority of the board were in fact lawyers . . .

**AH:** I think it was in Florida that the Florida bar had wanted a requirement before you came into Florida that the local bars appoint the majority of lawyers or maybe all lawyers I can't remember but on the board. Is that correct right.

**EJ:** That's correct and that took a great deal of negotiating also.

**AH:** Well what's interesting about that in 1983 Congressman McCullum from Florida was originally on the local board of a bar association when . . . in the 60s one of his major amendments which he got through and which is the law today was that a majority of lawyers on local boards had to be appointed by the local bar association.

**EJ:** There was a carryover a decade and a half later. But it was not a requirement, in fact we discouraged that, the majority coming from the bar appointed lawyers.

**AH:** Let's talk a little bit about some other things that you did to get everybody sort of on board acting consistent with the guidelines, acting consistent with the law reform the notion of this and some of the things you funded and the strategies you used to carry out the goals. One of those strategies was evaluations and threatened funding actions. A second strategy was the Reggie program. Third strategy was you put in place what I always describe as a very unique support structure, training, publications . . . and action . . . national centers. So I want to talk about some of those issues a little bit because this was also going on I can't remember the exact sequence but going on at the same time that you were setting up some of the initial grants and you were trying to figure out ways to carry out and make sure that the goals of the program were being implemented at the local level because you were a grant-making agency in the end and people don't work for you so

**EJ:** That's correct. We were writing so much on a clean slate in so many ways. As I mentioned earlier there was no poverty law, there was no law virtually out there, there were a lot of theories but in terms of judicial decisions there wasn't much of anything. So we decided we needed . . . an infrastructure that would allow lawyers in the neighborhood offices to be effective advocates and to be able to be aware of the latest theories that developed in this newly emerging field. And to receive the education in the legal fields that either didn't exist or weren't taught to them in law school. We set up a national training program housed at Northwestern and they would have regional training programs all over the country . . . sort of the basic nuts and bolts. We also decided that we needed to set up some kind of publication in the area and so we met with Commerce Clearing House and got them to agree to publish what was called the Poverty Law Reporter which was a looseleaf service that at least reported as the new cases came down they . . . there was some vehicle that the lawyer could have in the office and he would know that in a state five states away that there was a court had decided a given legal issue that would be helpful in a landlord/tenant case or whatever it might be. Then we

also realized that most of what would be useful to them was not something that had been decided by a court yet therefore would not appear in the Poverty Law Reporter but it was somebody had done a brief some place on some issue and it would be useful to other lawyers to have access to that brief. So we started in a very humble circumstances a clearing house essentially of nationwide well brief and memo bank. It started with one part-time law student in a room not much bigger than this but eventually we paired it with the national training program and housed it . . . and eventually it became the National Clearinghouse which is now the National Institute . . . National Center for Poverty Law so it still exists and is of course . . . would fill half this law school, I guess at this stage. But had . . . from the very beginning . . . into this field the kinds of lawyers that didn't exist in the legal aid societies, the really topnotch, preferably young either law graduates or recent lawyers . . . bound and determined from the first day he came there he saw that as one of his major missions was to get . . . what he saw accurately a great interest in the law schools and even among the young lawyers in the legal profession . . . doing . . . [END OF SIDE ONE OF TAPE] . . . so that very first year even the first year when we were mainly concentrating on grants for new programs we did a . . . campaign, the poster that went up in all the law schools and all the way around . . . For a number of reasons most of the legal aid programs couldn't afford to come to the law schools . . . potentially their local school to participate in the recruitment . . . all the bigger law firms do. Plus they were getting their positions completely out of step with the academic year so they . . . wanted to fill their slots right away so they fill it some local lawyer who may or may not have been very good but at least he was available . . . had a slot and they put him in there. So one afternoon it just popped in my mind I wrote a memo on it recommending most of the elements of the . . . including the names of the fellows Reginald Heber Smith was this hero . . . legal aid movement so that name . . . comfortable to the legal aid societies but the main elements . . . were that we would give a grant to some institution, probably a law school, to run this program so that they . . . would go around to schools in the recruitment season to recruit people they would be able to hire them with the money in the grant and then . . . so we . . . Caplan was the head of our research and development unit which was a two-person unit. The other member was my present wife, Barbara . . . Johnson, my wife of the last 33 years, not my wife then. In any event they contacted a number of law schools and ended up getting the most positive reception from the University of Indiana and Howard Lesnick who became the head of the program and did a marvelous job and he picked the people the kind of people we would have liked to pick if we were picking them ourselves. That first class was an amazing group. The number one and number three at the University of Chicago, we had number five from Harvard Law . . . was just a terrifically talented group. Included in the group was Dan Bradley later to become president of Legal Services Corporation.

**AH:** Henry Friedman

**EJ:** And Henry Freedman who is Executive Director of the Welfare Law Center now. Some stayed with it and others went on to other things. There was this group . . . got a lot of press . . . even when they . . . first went out in the field it was Bennett, Burger and Rainey because they had been first and third in the class and editor-in-chief of the law review at the University of Chicago and one had been way up at Harvard and so that the newspapers talked about the law firm of Bennett, Burger and Rainey were going to be representing poor people. Bennett later

became Dean of Northwestern Law School. Rainey became the general counsel of Inland Steel and Burger became a senior partner

**AH:** And afterwards and during his deanship to keep public interest in legal services central to some of the clinical work and other things at the law school so that early training paid off.

**EJ:** That's right and many years down the line. But anyway . . .

**AH:** . . .

**EJ:** . . . to be probably the most important thing we did I did was start the Reginald Heber Smith program.

**AH:** There were 50 the first year

**EJ:** Second

**AH:** . . . which was my class and there was 250 the third. So we poured in 400 in three years new young lawyers into this . . .

**EJ:** . . . that 250 level for a considerable period of time. Oh the focus changed over time. The focus in the original was strictly lawyers, didn't care what color, elite lawyers and then later on it became the need became more minority lawyers in the field, there weren't enough of those being hired more or less for the same reasons sort of emphasis shifted somewhat.

**AH:** But it was a phenomenal strategy I mean you think about a national recruiting but locally placed by . . . sort of from below had a major impact on the program.

**EJ:** And the local programs didn't resist because the salaries of these for people who were being paid by the national program.

**AH:** There were some other things in the support structure that were important . . . winding down here. One was the . . .centers . . .

**EJ:** That's right and Ed Sparer of course again gets a deal of the credit although he didn't realize he was piloting an . . . his welfare law center was the prototype, it was the success of that program let us just say oh we should just replicate it elsewhere. And so in other fields and so we started . . .that would be available that we might be able to draw in some professors on a part-time basis. Also again credibility you know it's the support center of Northwestern University or of Berkeley University of California at Berkeley was where the housing center was, etc. Just a little more credibility to what was a fairly aggressive strategy . . . was the controversial . . . that is from all of this . . . became controversy. But it was nice to have a little bit of protection there.

**AH:** Two other issues and we'll end. You also put out in the first year I believe, second year maybe, . . . law and action that wasn't quite in the same realm as the clearing house but it was also talking about what was going on in legal aid around the country.

**EJ:** And it was aimed at not just legal services but it got wide distribution by the bar . . .and community action programs and so forth and it was give a broader audience an idea of what a legal services program was all about. And I had a column in it so I could give a little goals and philosophies and that sort of thing

**AH:** And that went out to a lot of folks as I remember.

**EJ:** Yes it went out to thousand and thousands I can't remember the distribution . . . I think it was 40,000 or something like that. It covered a lot of the country.

**AH:** One other thing you did was . . . project group of some kind near the end of our tenure as I recall.

**EJ:** And that was to insure . . . it to a certain extent it gave us more credibility with the field . . . their advisory group recommended things that we would like to see happen and it also was to make sure that the advisory committee . . . at some point and that we would . . . an advisory committee that would be speaking directly from experience in the field and also pretty well assured that they would be advocating aggressive . . .

**AH:** Why didn't you use the NLADA?

**EJ:** NLADA . . . was more conservative than we were and it was still at that time dominated by the establishment bar.

**AH:** Okay. We'll end this segment, we've covered a lot in these first two segments. It's been terrific.

Continuation of Interview with Earl Johnson

November 2, 2002

Tape # 3

**AH:** . . . driving the status of the legislative framework for OEO Legal Services that existed in 1965-66 and the we'll go from there.

**EJ:** Well there was no legislation specifically authorizing a legal services program as part of OEO at the time the program started. We actually evolved out of the Community Action Program which was legislatively mandated and talked about all kinds of efforts to help overcome poverty. And Sergeant Shriver under that umbrella created a number of initiatives

that were not specifically authorized in the legislation initially including Head Start and Upward Bound and Legal Services and several other initiatives. In 1966 we decided it would be kind of important to ensure the long term future of this that we actually have some language in the statute so Clint Bamberger asked me to draft something and it started with a paragraph and by the time we got done it was pared down to one sentence. And it fit into a new section a subsection of the Community Action Program they set up for these what Sergeant Shriver labeled as special emphasis programs. Those were programs that were part of CAP but they had special emphasis from the national level, Head Start being one, all the others I mentioned and Legal Services. So we finally had at least a statutory basis as well as programmatic bases for the OEO Legal Services program. You mentioned legislative battles That first happened in 1967.

**AH:** That's correct

**EJ:** It resulted from a few cases that California Rural Legal Assistance had brought in California. The first of them was a case which resulted in the California Supreme Court declaring some efforts by then Governor Reagan to cut unilaterally cut Medical by several hundred million dollars they declared that what he had done unconstitutional only the legislature could do what he had done. He didn't like that very much.

**AH:** The case was *Morris v. Williams*.

**EJ:** Right. And this is a pure sidelight but it turns out that at the trial level the trial judge in that case was a judge named Perluss, his son is now my presiding justice on the court of appeals so it goes back a long ways. And then there was a case having to do with what would now be called a guest worker program but was then called a Bracero program where the growers would import during the growing season Mexican workers which tended to depress the market for domestic farm workers and made unionization very difficult among farm workers, so the California Rural Legal Assistance filed a couple of law suits, ended up negotiating with the Labor Department and got some restrictive provisions inserted in the Bracero program that made it less of threat to the farm workers. That too irritated, in this case, not just Governor Reagan but particularly some of his chief financial backers in agro business. Result, I get a telephone call from somebody who had happened to be in the galleries in Congress that day announcing to me that Senator George Murphy, who was a good friend and fellow Republican of the Governor, had marched up to the podium with an amendment which would prohibit legal services lawyers from representing any client who had any law suit involving any government on the other side, state, local, federal whatever since both of the law suits they didn't like involved government representation against government. It was defeated in the Senate fairly handily maybe two to one but the Senate at that time was much more liberal than the House and obviously Murphy had not had any chance to do any politicking on behalf of his particular amendment so we got very concerned and put together an effort to make sure the House of Representatives did not enact such legislation or anything approaching it. We were afraid of amendments and so forth we would end up with something not that bad but still something pretty onerous. We met with all kinds of congressmen, we managed to get all kinds of newspaper editorials against those kinds of amendments and a lot of other things. We were working with a congressman named Lloyd Meeds who has actually been interviewed for this

oral history project very closely. He was a Democratic congressman who was on some of the key committees on worked very hard on our behalf on this and I was sitting up in the gallery when the OEO Act came up and we were worried about an amendment being introduced and all that and he was working the floor and at one point he raised his hand like this and sure enough they had persuaded all the congressmen who were thinking about bringing that legislation to the floor not to do it, so it never was even introduced in the House of Representatives. So one legislative battle done. As everybody in our field knows there has been a lot of other attempts over the years to do similar things to legal services but the first one ended up fairly happily.

**AH:** Was there any other while you were at OEO was there legislative battles. We talked a little bit in our first interview about some of the work that went into regionalization effort in getting the some language in the House report. Was there any other legislative while you were there, while you were still the director that you recall.

**EJ:** Not any specific legislative efforts the second time around, it was after the Nixon administration came in that there was another such battle but not this time.

**AH:** Do you remember the second Murphy amendment which was, the first one was the one you just described, a second came in '69.

**EJ:** That is correct and the only thing I can recall about that was I was one of a number of people that were flown in to Washington to meet with Terry Lenzner who was then the director of the OEO Legal Services program to give them some counsel and advice about how they might resist this effort based on our own experience. And you know I made a few telephone calls and things like that but I was not heavily involved in that one.

**AH:** The second Murphy amendment would have given governors a complete veto over the program and

**EJ:** That's right with no override possibilities by the director of OEO.

**AH:** Why was that such an important and significant amendment if it had passed?

**EJ:** Well for one thing that would in practical terms of the state of California it would have meant that a lot of legal services programs would have been eliminated starting with California Rural Legal Assistance because Governor Reagan would have done exactly that, that he had no worry about override by the director of OEO. We actually had in 1967 or early '68 the renewal of the California Rural Legal Assistance grant was actually vetoed by Governor Reagan. I then scheduled a meeting with the director of OEO who was Sergeant Shriver at that time and I can recall the conversation very well because I went in there loaded for bear. I had all kinds of information of endorsements of CRLA, I had all the arguments that could possibly be offered in support of CRLA and why he should override it and I said well Sarge I'm here to talk to about CRLA and the fact that Governor Reagan has vetoed it. And he said what do we have to talk about. If I wouldn't override that veto we might as well not have the war on poverty. So it was a short conversation. He did say one other thing though. Make it as easy for as possible

so we did in fact get all those endorsements and supporters lined up and have them make public utterances and all that. He was ready to override that veto from the first moment. What ended up happening was some face-saving steps by the governor's office when it became apparent that Sarge was going to override Governor Reagan's veto they started talking about how well maybe if you just make this little bit of a change or write something in this letter or something like that, most of which we didn't do, but they finally issued a press release saying the Governor was withdrawing his veto because OEO had essentially capitulated or something like that, of course, none of that was true but it was a good public relations statement. We had a number of vetoes. We had one in Florida and a couple of other places but they were all over and none of them were as high profile a political fight that CRLA veto by Governor Reagan.

**AH:** That was of course the first of the political fights over the CRLA of Governor Reagan's vote of CRLA. There was a second which you were not there at the time and we interviewed . . . and we hope to interview others about it.

**EJ:** That was a much tougher situation because by that time Sergeant Shriver was not the director of OEO, Donald Rumsfeld was the director of OEO and it ended up with a happy ending but only with great difficulty in the hearings and all that. I testified at those hearings by the way but I was not a major player in that particular enterprise.

**AH:** Let's talk a little bit about the need for and the early development of the Legal Services Corporation Act. Why did we need this? We were in OEO, Legal Services was, what led to the rationale and the early work on this.

**EJ:** After I left the directorship of OEO Legal Services in July of '68 I was immediately appointed to the national advisory committee and I ended up being appointed to be the chair of the legislative subcommittee of the national advisory committee. By the time we had our first meeting of that national advisory committee Richard Nixon had been elected President and we knew there was going to be a dramatic change in the administration under which Legal Services program operated. That handwriting, as far as I was concerned, and most of and maybe all of us in this community actually, was that the handwriting was on the wall as far as OEO. Sometime OEO as such was going to be going by the wayside. And we thought that if we were going to go some place else now I think I may be I got ahead of myself, we started talking about different homes there might be for the Legal Services program and that we should plan for moving to some home. There was some discussion of the possibility of going to the Department of Justice as some subunit within the Department of Justice. There was some discussion of going to HEW as some subunit within HEW.

**AH:** This is where the Head Start program went ultimately.

**EJ:** Right. But I don't know if it was a consensus but certainly the center of gravity of our discussions in the legislative committee was that we should try to get some political insulation particularly political insulation from the White House because that's where at that time we perceived was likely to be the political problems would arise. We looked at a couple of different models, the National Science Foundation and the Corporation for Public Broadcasting and some other of those kinds of independent agencies. In early 1969 about the time that

Nixon was actually being sworn into office I drafted for a forthcoming meeting of the legislative committee just a two-page outline of something I called the National Justice Commission or some such thing. It had many of the elements that ended up in the Legal Services Corporation bill but it also had some other elements that got dropped by the wayside because we thought if we broadened the scope of this independent entity so it just wasn't legal services that everything that had to do with the law and advancement of the legal profession and so forth that would have federal funding it would provide a broader umbrella an apolitical umbrella around the more political and controversial activities of legal services. That part got dropped out. Interestingly enough some of the features recommended did come into existence like the state what do they call it that gives federal money

**AH:** . . . justices . . .

**EJ:** Yes some of those things actually percolated beneath the surface and actually eventually enacted as separate entities but originally the idea was to be all under one umbrella. That notion was actually surfaced the independent entity for legal services was surfaced with the transition staff of the Nixon administration and it got a lukewarm but not completely cold reception. They had decided that they wanted to keep legal services as part of OEO, they saw it as the most useful part of OEO and hadn't really recognized the controversial nature, I guess, as yet. And I suspect that Rumsfeld actually wanted it as part of the OEO at the beginning at least. But they did say it's an interesting idea we'll keep it on the back burner. I had through my wife a very good relationship with one Republican congressman, Bill Steiger from Wisconsin. His chief of staff and my wife were very close friends and during all of the fights we had had such as the battle over the Murphy amendment and so forth he had been our most valuable ally on the Republican side. And we surfaced this with him and he was very interested in this notion of independent entity. He also was a very good friend of both Rumsfeld and George Bush. They all had come together at the same time as congressmen, I believe, young congressmen to Washington, D.C., the first George Bush. And they had all been fairly moderate although Bill was more a true liberal Republican. So he was our intermediary whenever we wanted to surface something or find out what was happening and he would play that kind of role. Fast forward a couple of years and we have all these regionalization fights and all the things that you talk to other people that all these things that happened after I was at OEO Legal Services.

**AH:** You know I interviewed Terry for example Lenzner about his era . . .

**EJ:** So that's happening in the background at the same time we're still trying to see if we can get something going on this independent entity although it was really on the back burner for us as well as back burner for the . . . About the time I'm trying to pin it down exactly whether it was a little before or a little after the time that Rumsfeld fired Terry Lenzner and Mickey Cantor and so forth, I got a call from Bill Steiger and he said the White House is interested in an independent legal services entity, can you get something going on that. So

**AH:** Where were you then?

**EJ:** Oh I was a professor at the USC Law School, University of Southern California Law School, had been since '69. I spent a year writing Justice and Reform, the book at Boalt Hall and then I got a job as a professor at USC. So that's where I was. So a lot of things happened from then, from that time that was late 1970 I believe aren't we talking, yeah late 1970, I was spending an awful lot of time on this stuff for about five or six months. First fleshed out the independent notion. We had decided the way to go was something modeled on the Corporation for Public Broadcasting an independent public corporation. So then we began drafting the legislation after we had fleshed out the outline so to speak. I was involved in the individual rights section of the American Bar Association at that time and Bill Klaus was then chair of that and we got Bill managed to get a grant from the Ford Foundation, a small grant to do a study and produce a report that would like if this whole notion had the backing of the establishment so to speak it became more or less an ABA proposal. So that study was done. I was one of the members of the committee and it was issued as a joint report of I think . . . and the individual rights section. And it recommended and gave all the justifications for such an independent corporation. It wasn't tight enough to submit to the House of Delegates to get that kind of official imprimatur but it was a published document with all this on it and it was submitted to all the relevant groups at the ABA midyear meeting in 1971, February 1971, this meeting took place in Chicago. I'm meeting with Ted Tetzlaff who in my room he's the acting director I think at that time of OEO Legal Services, we're working on the final draft of a draft bill. I'm having a breakfast meeting with Mickey Cantor to talk about putting together a lobbying operation to support this and we decided on something called Action for Legal Rights and at that breakfast since he was not employed anymore I said how would you like to be the staff director.

**AH:** Mickey

**EJ:** Mickey Cantor, I asked Mickey Cantor and he said I'll give it some real thought it sounds very interesting. He ended up and after we had Action for Legal Rights as a lobbying arm and he was the director of it and he for a year and a half or two did that as a full time job essentially. Then more conversations with Bill Steiger and Mickey quickly came on board and he was meeting with the Democrats and I was working through Steiger lining up Republican support and we managed to get Mondale-Steiger bill legal services bill introduced I think it was probably late February or March of 1971. We wanted to get it down really quickly because the White House was coming out with its own version and we were trying to come up with a version that number one would insure as much independence for the lawyers in what they did as possible and also if possible have a fair number of the members of the board selection restricted in a way that the President couldn't put on a bunch of right-wingers. We set up a structure where the ABA would submit three nominees and the President would pick one and Association of American Law Schools would do the same, etc., etc. The Mondale-Steiger bill had over 100 co-sponsors between the Senate and the House and about a third of those were Republicans. And the White House's which was finally introduced maybe a couple of months later had I think I think five co-sponsors. Then began the negotiations back and forth. Mickey and I were on the phone probably almost every day and discussing options and fall-back positions and all that sort of thing and eventually what passed was not 100 percent of what we would want but about 80 percent of what we would want. And we were feeling very good until President Nixon vetoed it. I was also involved but less directly

**AH:** Let me just ask a question there. Do you remember why Nixon vetoed it and also what it was a part that was it was part of a whole

**EJ:** Yeah it was part of a whole OEO bill and the main reason he vetoed the overall bill was because of some child care legislation or something

**AH:** Yes the legislation had created a universal child care provider.

**EJ:** So he was vetoing the legislation anyway so I guess he decided he might as well veto this because I think his objections were number one the fact that we had succeeded in fairly severely restricting who he could appoint to the board and

**AH:** He also mentioned that they didn't contain some restrictions that were necessary.

**EJ:** That's correct. Because we had managed to achieve our two objectives which was to have a bill that guaranteed the independence of the legal services lawyers and also that limited to some extent the degree to which the President could make too conservative a board. So anyway he vetoed it. 1972 I was also involved as Mickey was and but less directly. The other time I came in I testified I was working the halls the same way Mickey was, went into conference committee and all that. This time I was much more remote. But I did participate in what turned out to be the most crucial decision. We had again emerged with a bill both in the House and the Senate that wasn't nearly as good on the board issue but was still very good on the independence of the lawyers issues. And it went into conference committee and for I think reasons that had to do with other programs not with the Legal Service program Senator Gaylord Nelson who was steering that conference committee came out with a bill that was worse than either the House version or the Senate version in terms of both independence and the board's composition and all those other things. So I got a call from Mickey, a lot of other people got the same call I believe and the question was should we withdraw the bill rather than get this bill. And I recommended, among others, that we in fact withdraw the bill. So we killed our own bill which what it amounts to. In retrospect that was not a wise decision because that bill was still better than the bill we finally ended up with in 1974 and I was almost not involved in the '74 bill. There was a couple of places where I got called for a decision but I wasn't as nearly involved as the two previous versions. The only thing that I thought was important at that time was a call from Bill Steiger who talked to me about what he should do because of an amendment that had been offered by Congresswoman Edith Green which would on its face appear to restrict if not prohibit a great deal of the backup center activities and so forth. But as I read the amendment I could see that it was so full of loopholes that we should not try to amend it nor should we kill the bill again just because of that. And so I said no this time let's please go forward and don't encourage anybody not to vote for it. So that was about the only thing I did that was important in that particular struggle.

**AH:** There is a little

**EJ:** Mickey was out our way by that time

**AH:** Right and Mickey Bennett replaced Mickey Cantor was head of the Action for Legal Rights in this particular interviewer was Mickey Bennett's assistant. There was an interesting context on the point you just made which was that Congress had passed Legal Services Corporation bill without Edith Green's amendment in it at conference it was put in the House in '73, Senate '74 didn't have it. Conference committee came out without it and this is in July '74 and then conservatives put pressure on Richard Nixon said they wouldn't support him through impeachment, this was one of three demands of conservatives, if he didn't go along with the Green amendment so Nixon said he would veto the bill unless the Green amendment was put back in. That's when it came back in and that's when the issue was shall we go forward

**EJ:** That's why Bill Steiger was calling me as a Republican he wanted to know should he put up a big fight and so forth or should we just let that one go through. And I said let it go through. I'm sure there were a lot of other people that were telling a lot of other people to let it go through too.

**AH:** And end result is the backup centers essentially all continued, some were merged in LSC and ultimately spun out again.

**EJ:** Right. The amendment did not impair the activities the way some people thought it would including Edith Green.

**AH:** Well Edith Green testified before the LSC board after it was formed and said this language is meant to eliminate the backup centers and all the lawyers all the good lawyers on the board including the Republican lawyers Bob Kutak and Roger Cramton said well it doesn't do that.

**EJ:** Right. You could have done it but you didn't. That's how I interpreted the language also.

**AH:** Anyway there is a lot. Let's talk a little bit about what you've done in civil legal aid after you left OEO and after these massive effort you were involved in '71 and you were teaching in Southern California and why don't we talk a little bit about that because you just didn't leave and go off to academia, you stayed very much involved in civil legal aid both in this country and internationally. And I think we ought to focus a little bit on that.

**EJ:** While I was in academia for most of the time I was in academia although I was involved in this legislative effort about the Legal Services Corporation most of what I did that is relevant to the field was academic work, that is research and writing. I spent a couple three years expanding and polishing Justice and Reform and then in 1973 I was appointed to a committee the Ford Foundation had set up a committee on legal services in development countries and they . . . a staff and all that and was promoting more legal services in developing countries around the world. Also on that committee was Professor Mauro Cappelletti, an Italian who had a joint appointment at the University of Florence and at Stanford University. And after one of the sessions and this operation was headquartered in New York he and I went out to dinner and I learned about his interest in legal aid and comparative legal aid and legal aid in countries of Europe. And that he and a professor named James Gordley had finished an article two companion articles on comparative legal aid and they were about to expand that into a book about legal aid around the world or at least in what he called modern societies the more

advanced legal aid programs. And he asked me if I would be interested in being involved in that effort and I said yes and then he said what made it really easy to say yes to that was it involved coming out and spending six weeks in Florence for a summer, summer of '73. So I went out there and worked on that book and while I was there then we talked about well you know access to justice is broader than providing lawyers for poor people, there is also other ways of making the justice system more accessible to poor people by having forums where lawyers aren't necessary and lots of things. And there are lots of things happening in various countries about that. So he said why don't we create a major project and gather information from all around the world about this. So I came back in the summer of '74 and we finished up the legal aid book which is called *Toward Equal Justice* which was published in '75. I also drafted a proposal to the Ford Foundation for this massive worldwide study which eventually was published in it's four volumes but some of the volumes are two books each so I think it's about 8 or 9 volume set called *Access to Justice* and he invited me to come back and work on the project since we did get the grant in '75 I had a sabbatical coming up so my wife and I moved to Florence for most of the year of 1975 and did this massive study. We developed a detailed questionnaire and we sent it out to experts in probably 30 or 40 countries and then in addition to the survey parts there was an analysis and comparative essays and all that. It was quite a massive study which is actually having a considerable amount of influence particularly in South America, particularly in some of the European countries and to a certain extent in Asia. But that also from a domestic perspective the thing that was most intriguing to me was what I found out about how much more a number of the European countries were investing in legal aid, civil legal aid than we are in the United States. It was a lesson to someone who I entered that enterprise thinking that legal services in the United States was the most advanced system and probably the best funded system in the world and I was quickly disabused of all of that. And so I have since then on many occasions through speeches and writings and otherwise tried to get across the message that we have a lot to learn from other countries about legal aid and particularly the greater commitment that many of these countries have demonstrated in terms of how much they England has 12 times as much per capital spent on civil legal aid as there is in the United States. So I think there is a lot to learn from that. And in fact I did the most concrete thing that emerged from that was I learned about a legal aid funding system they have in British Columbia which is called interest on lawyers trust fund accounts and brought that notion to California. We had held an access to justice conference and the same notion was picked up by the chief justice of Florida who was one of the people who came to that conference in Florence. And he got his through before I got mine through. But that was the beginning of IOLTA which has been the substantial source of funding in this country. Okay, starting in 1976 the American Bar Association set up a special committee on the resolution of minor disputes. This was to deal with sort of another dimension of the access problem. It's the problem where the dispute doesn't make any difference how much money you make the process resolving the dispute costs more than what is at issue. So that even middle class people and upper middle class people can have a lack of access for those kinds of problems. So that was what was created to deal with and Sandy D'Alemberte was the first chair of it and I was one of the members of that committee. So that dovetailed a lot with the reform research I was doing because we were looking at a lot of access institutions that often serve middle class people as well as lower class people and dealt with smaller disputes as well as more major issues. That became particularly relevant because fast forward to 1991 that Sandy became president of the American Bar Association, somewhere

**AH:** Yeah either '90 or '91.

**EJ:** In that '90-'91 era and he and I had been good friends over the years and I was on that committee like seven years till a year after I went on the bench so and he and I worked together on a lot of issues and remain fast friends. When he became president-elect it occurred to me that this was a unique opportunity to have someone who was as sensitive to these issues and as liberal and president so I was then serving on the board of the National Legal Aid and Defender Association and I got three or four of the most knowledgeable people in that group and together we drafted a long I mean probably a 40-page memorandum to Sandy recommending that he have as his initiative in his year the movement toward creating comprehensive right to counsel or at least access to justice and he loved the idea. And so eventually it was set up as a subcommittee or committee or whatever of the consortium on legal services and the public within the ABA structure, this committee on access to justice, I was made the chair of it, you were one of the members. There were a number of very good people on that committee. And as long as Sandy was president we flourished and we had a lot of momentum but as is true of so many projects within the ABA long term projects have a hard time sustaining themselves because the next president has his agenda and the president after that. So by 1994 we had two things happen. First, the ABA's interest had diminished greatly in supporting this enterprise and it had become apparent because of Newt Gingrich taking over the Congress that it would be very difficult to even think about anything half as ambitious as we were talking about. We're going to have to save Legal Services once again. So that effort sort of died away. But as it turned out another very long term friend of mine became president of the California State Bar about the same time, about '93 '94 about the time the national effort was subsiding.

**AH:** Before we get to that I should point out that we actually wrote a little piece called Equal Justice in this Century

**EJ:** Uh huh, 1990-91 we were talking about trying to achieve this objective by the end of the century.

**AH:** Well it's dated October 1993 but this was the project, what Americans can do to make access to justice a reality for the common citizen before the end of the 20th century. We were a little naive

**EJ:** As it turned out the politics didn't go our way. We thought maybe when Clinton came in the politics might go our way but then the Congress got taken over. And as I had said earlier, the Legal Services Corporation had been structured to insulate the corporation from an unsupportive president. It was less effective in insulating it from an unsupportive Congress. It had been created at a time when Congress was dependably Democrat and the White House went whither and nither back and forth but when the Congress was taken over by the Republicans it became a different political battleground. Other people can talk more about that than I can. So anyway about the time this one was tapering off at the national level [END OF SIDE ONE OF TAPE] . . . I sent a much shorter memo to my good friend Harvey Saperstein who was the president of the California State Bar and to his great, great credit he seized upon the idea as a great idea even though he recognized it's going to be a long term effort we were

talking about first starting with a working group that would take two or three years to come out with a report recommending what should be happening and then a commission being set up at some point the main goal of which was to draw outside the legal profession drawing support for this whole notion of increased access to justice. And when business and labor and all kinds of interest groups like that which had been the underlying principle behind this particular effort the national effort. But to his great, great credit because none of this could have happened during his administration other than setting it up but he did and we created the working group, had some very high powered lawyers, legal services lawyers and a couple of academics and produced a 88-page report called And Justice for All which was approved by the California State Bar Board of Governors and a commission was set up in 1996 although it took several months to get everybody appointed and all that and it's first meeting was in June of 1997. And that has proved to be a quite successful enterprise so far. It has been particularly effective it has been less effective in drawing in the real enthusiastic support of the interest groups outside the broad legal profession. It's been very successful enlisting the support of the judiciary which has proved critical. We've managed to get through \$10 million a year appropriation so called equal access funds. The first general revenue funding of civil legal services in the history of the state of California and it was the foot in the door. Very successful in getting courts to be much more sympathetic in how they treat lower income people. A lot of self-help programs set up by the courts and in conjunction with the courts. There is now so called access protocol that all changes in court rules have to be subjected to scrutiny as to their impact on access to justice for lower income people so they won't inadvertently do something that is very disadvantageous to low income people. A requirement that there be an educational component about access to justice in all the judicial training, a lot of things like that. It looks like we are going to get a very modest but our very first cut of the court fees will go to civil legal services although I think over half the states have that now. It's just \$2.00 but again the foot in the door. So we've been able to achieve a considerable amount in that field and we are beginning to make more inroads. The commission itself does have members appointed by the governor and legislature and by the state Chamber of Commerce, labor unions and all this but those representatives have not as yet really generated that much strong support which we hope will happen in the future that broad base which I think is essential. But I was co-chair of that I was chair of the working group that did the first report and I was co-chair of the commission year before last no I'm finally off the commission.

**AH:** You're off. You were also involved in the five-year status report.

**EJ:** Yes I was the chair of the drafting committee. So I keep my hand in. Still trying to be a judge too.

**AH:** Well before we end, I think we need to do some thinking maybe another interview about the future but I can't resist asking you, you've spent a lot of time over the last 10-15 years thinking about the rights to civil counsel, right to counsel in civil cases and had been a proponent of that. Can you capture that a little bit just before we leave here.

**EJ:** Well a lot of that feeling and the writing I've done in that field flows again from that period when I was doing the international and comparative legal aid research because I found that in most European countries there was in fact a statutory right to counsel in civil cases and that in

Switzerland they had had a constitutional right to counsel declared by the Supreme Court in a decision in 1937, a quarter century before *Gideon* and we even had a right to counsel in criminal cases. And then the European Court on Human Rights declared the European Convention on Human Rights the requirement in that convention that everyone have a fair hearing in civil cases meant for poor people they had to have a lawyer. So they declared it essentially a constitutional right to counsel in civil cases. So I ask why not us since I can't see the difference between a requirement of due process that we have in our constitution and a requirement of a fair hearing that they have in the European Convention on Human Rights. I presume due process means a fair hearing and I couldn't see much difference between the constitutional provision they have in the Swiss constitution that the Supreme Court there found created a right to counsel which was that all Swiss are equal before the law. I think our equal protection clause seems to suggest that all Americans are equal before the law so anyway I've been preaching that for quite a while now going back to before I went on the bench. And hopefully one day some court will say yes there is a right to counsel in civil cases at least where counsel is necessary for effective access to justice.

**AH:** Let's hope so. Thank you Earl. We will pick up some broader questions in the next interview.