March 17, 1999

Conducted by Zona Hostetler

Call number: NEJL-009
HOSTETLER: This is an oral history interview with Professor Gary Bellow, professor at the Harvard Law School. The interview is being conducted on the campus of the Harvard Law School on March 17, 1999. I am ZONA HOSTETLER from Washington, D.C., and I will be conducting the interview.

HOSTETLER: Gary, I know that in the early 1960s, soon after you graduated from Harvard Law School, in the class of 1960, you were working for the Legal Aid Society, or Legal Aid Agency, which is now the Public Defender Service for Washington D.C. This was not a typical career choice for Harvard Law graduates in the early '60s. Can you tell us how you happened to begin this work?

BELLOW: That's a good question. I'm honestly not sure. I was interested in the treatment of the criminal defense. I was interested in learning how to be a trial lawyer. I liked being an outsider. And I felt that a criminal defense lawyer would be an interesting thing to do, particularly in a place like the District of Columbia that has lots of problems between the police and the population.

And I didn't want to do -- where my -- go where my friends were going. I didn't want to go to the firms. I wanted to see what I could do on my own and the ways I could use the legal materials I learned, and ways I could at least explore a possible different path. But it wasn't as developed as, "I went in for a career." It simply was curiosity, interest, a sense of being young enough to try again.

Q. How did you happen to develop an interest in criminal law at that early age?

A. Courses I took here, had -- a graduate program I was, I was engaged in at Northwestern

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University. I got a Ford Foundation Fellowship in criminal law and spent a year at Northwestern University Law School studying the criminal process. By the time I finished that, I knew that I wanted to tryout being public defender.

Q. Was there someone at Northwestern who was particularly influential or persuasive?
A. There were two people. There was a professor named Claude Sowle, and there was a professor named Fred Inbau. Both of them had very different views on the criminal process --

Q. Yeah?
A. -- than I had, but I liked them enormously. They were fair, they were open, they were very well informed. They made arguments that I had not heard before. I had difficulty answering and they opened up this world in a way that forced me to try to understand why people did what they were doing. Why they accommodated in the particular ways that they did. Why the plea bargaining system worked the way it was. So, I owe them a debt, just like I owe debts all through my career.

Q. Had you -- before you began the job with the Legal Aid Agency, done any work with the low-income people? Either legal --
A. In the...

Q. -- or non-legal?
A. In the army I did a lot of -- I was a Private in the, in the army, but a lot of my fellows got into trouble, Article 15s and other kinds of court-martials, and I was already a lawyer. So I did that kind of work and that was a pretty good cross-section of the population of the United States, and, even then, I began to realize that I loved being on my feet in the courtroom. Although the army situation is different. And I think, it was a good beginning, but that's about all.
Besides, I hitchhiked across the United States twice, I worked on Pepsi Cola trucks, I delivered chairs in Kansas City. I was curious and I wanted to see what the -- how the world really worked, and so I went every place.

Q. Which came first? Northwestern or, the army?
A. Northwestern came first, then the army --
Q. And then Washington, D.C.
A. -- and then Washington, D.C.
Q. And how did you land in Washington?
A. Well, that's long story. My mother was ill. I actually got a job in the appellate division of the Legal Aid Society, Society of New York and worked there two days.
Q. Oh, gee.
A. And then her illness, for complicated reasons, meant that she had to be out of New York. There were just too many strains on her in the New York environment where she'd grown up and where she lived and where she got into, trouble. And so we drove south.

I wanted to be a criminal defense lawyer, but I didn't go to the Legal Aid Agency in the District of Columbia. In fact, we first went to Baltimore and looked around, and couldn't find either a place to live or a defender system that would hire me; wound up in Washington, D.C., was, was told that there might be a job. It turned out there was only an investigator's job. So for the first six months I did nothing but investigate cases at night and watch trials in the afternoon. Again, that was, that was the head of the Legal Aid Agency, a fellow named Sheldon Murray. He said, "This is a terrific education. You should sit in a courtroom every chance you get and then you'll do the work for us at night, because you can't investigate these cases in the daytime
anyway." So I both learned Washington and I learned the court system.

Q. What sort of staffing resources and public support did the Legal Aid Agency, now called the Public Defender Service, have in those days?

A. There were five lawyers, two investigators. I think the original budget was $70,000 a year. I got there about a year after it was established; established by the statute.

   It had never gotten an acquittal at the time I came. And although the lawyers were good, the system was so stacked and it was so obvious that the reason they had backed the Public Defender System was to help the processing of cases, that they simply couldn't find a way to resist. So my experience in the Public Defender was finding a way to resist this culture that forced everything into plea bargain.

Q. And how did you do that?

A. Well, we started out by getting to know each other; and by struggling together with the massive cases that we were appointed to. That is, I think I was to appointed to 60 cases in the -- I was an investigator first, but by the time I became a practitioner, I was given 60 cases. There was no way to prepare the cases. Impossible.

   And they all had the same problems. What we agreed to is that we would go to our clients and say can't properly prepare your case. What we would like to do is, we would like to say to the judge, we can't prepare the case, so that we'll have more time to actually prepare a better argument for reducing the caseload, which will help other people. We were told the defendants would never get -- go long with it, but many, many did.

   And when they did we would go in front of the Chief Judge, his name was McGuire; each of us, and say, when the case was closed, we'd say, "Your Honor, we are not prepared to go to
trial. We have not filed any motions in this case. We have checked on all of the police reports. We have not visited the scene of the crime. We have only seen the defendant twice. We haven't seen any of the witness lists you gave us..." And now it goes through a rap like that.

He simply blew his top and sent us out to the various trial judges where we'd repeat it. And in about a week, I wound up in front of Judge Pine, the Judge who joined Harry Truman in the steel conflict? And he looked at me and he said, "You understand, counselor, you're putting this on the record." And I said, "You Honor, we're putting it on the record intentionally. This is not going to be a fair trial." He said, "Well, I don't know if you're right or wrong, but I'm not going to try the case with that other record. You go back to Judge McGuire and tell him he can't do anything about this, because we'll get reversals." -- This is D.C. Court of Appeals -- "We'll get reversals by the caseload. And if you guys want to be stubborn, you'll probably pay a price, but I'm not trying cases where you say you're not ready to give effective assistance in counsel."

And we stopped it.

Q. And the other judges took --

A. The other judges --

Q. -- the same line?

A. -- took the same line. We publicized it. The other judges took the same line and we got the caseload reduced. Now, it was -- there's a constitutional right to counsel in a federal court. Other lawyers had to be appointed. But for -- to create an operative and effective Public Defender, which would be -- which would set standards that would be appropriate for the rest the Bar taking appointed cases, we had to have a reasonably limited caseload, because we had to prepare the cases in a way that demonstrated what you could actually do. And pretty soon we
were were running acquittal after acquittal.

Q. What percentage of the caseload did the Public's -- did the Legal Aid Agency handle?
A. I think about thirty percent.

Q. Did, the other lawyers in the communities begin the follow along? Your example?
A. Not right away. And, and I would say not ever completely. But, as we began getting results, lawyers, were curious, right? I mean, the entire system had been just a defendant processing system, and we were making motions that people had not been making. I mean, this actually began, not the strategy of sort of taking on the judges directly, but it began with the Prettyman program at Georgetown some years earlier. And that's another debt I owe.

That is, I was encouraged to do this by Ken Pye, who became Dean of Duke Law School and I guess, um, general counsel to the university? And a fellow named George Shedoan, who was --

Q. Could you say that name again? I wasn't very clear.

Q. Was he -- and he was a Prettyman Fellow?
A. No, he had been, he had been an instructor in the Prettyman program. He was a private practitioner. He worked up in Maryland. Kentucky Law School. And I showed him a memo I had wrote on some issue; I think it was under the Jencks Act. And I remember vividly he and Ken were there. They began laughing and they said, "Whoever taught you how to write, how to write a motion before a United States District Court Trial Judge?" {laughter} You know, I had strings cited {more laughter} and I -- and they began instructing me on how you do trial work; trial work. And I was grateful to them and some of my later work in criminal instruction came
from that experience because I was taught in that setting.

Q. Interesting.

A. And we shared a lot of the same ideas; came up with a huge number of challenges to existing practices.

Q. How long did you stay in the criminal -- in the criminal world.

A. Maybe three-and-a-half years. And by the end of two-and-a-half years I was, I was doing murder cases; which, although I think a lot of criminal defense lawyers don't admit, it’s much easier than armed robberies.

Q. Oh, really? Why is that?

A. Because all those other crimes have a eyewitness.

Q. I see.

A. And the homicide cases don't. They’re all built on circumstantial evidence. There's no comparison. So as lawyers get into more complicated cases, their records get better. But if you've gone through it, you realize why. The laws of magic -- it was a totally different kind of case.

Q. So did you see any changes in the Public Defender Service as an institution --

A. Oh, a lot.

Q. -- while you were there?

A. A lot. We, we systematized -- we took over the appointment of counsel outside of the cases we could handle ourselves. We developed a series of review techniques for reviewing the quality of performance by the appointed Bar, and we developed a lot of training programs.

So, the Public Defender -- the Legal Aid Agency at the time became a key player on the
defense side. And the atmosphere in the place just altered. That is, we would aggressively assert the rights of criminal defense, defense. I mean, it -- the work's full of moral issues and ambiguities, and I won't say we didn't experience them like everyone else; but there was a general notion that this was a role worth doing.

Q. To what extent were other Public Defender Services in the country following your example in Washington?

A. I would say very little. I mean, that was my first experience with the National Legal Aid and Defender Association. The Public Defender Services around the country were a range of accommodative to more aggressive. But I don't think they were following our example. It, it always seemed different.

There was the United States District Court, that we could do things that other people couldn't do, that it was a new agency, that the Congress basically supported this kind of approach. I'd...who knows?

Q. What role was NLADA playing in that --

A. Well --

Q. -- in those days?

A. NLADA was a combination of public defender the civil legal aide programs and it was my first exposure to the possible nexus between public defender work and civil legal aid. Although the organization covers both of them, there is very little communication.

Q. Was it the very active organization at that time?

A. Yeah, I think it was active within a very limited vision of legal services. I think many manic presidents of the ADA had served as presidents of the NLADA, way back, you know.
And it was the elite Bar. It was Reginald Heber Smith and a lot of fine New York and Philadelphia and Boston lawyers.

Q. And you met them?
A. And I met them and participated with them. But they still held on to a view of legal services, for the poor, as a charitable enterprise. And certainly not one that ought to be funded by the federal government. So that became a big split.

Q. How did you come to be interested in working on civil legal matters?
A. It was being in the houses of defendants. You -- I mean, I've always been on the streets, because that's, that's the way -- We had two investigators and I used students from Georgetown, but I was out there a lot; myself.

I mean, I think that if I'm going to cross-examine somebody about the scene of the crime, I want to have seen the scene of the crime. And if I have -- want to understand more about the defendant, I ask the defendant whether I can go to his home or visit his brother or talk to him. And I saw life experiences that I, I won't say shocked me. It's not my way to be, to be shocked, but they were really moving and nothing was being done. And it is a complicated thing, criminal defense work, because -- I mean, I represented some defendants three and four times even in the three-and-a-half, three-and-a-half years and I felt we had to do more. And that the civil vehicle might be a better vehicle for bringing about change than...

Q. What were the civil legal aid programs in those days doing about those problems --
A. They...

Q. -- that you solved?
A. Well, let me try to be fair. I think they cared about them. I think they tried to handle the
individual cases that came from them. They were overwhelmed with caseload in every city in
the United States. There were unbelievably understaffed. You know, there'd be three lawyers
for an entire city, and they also were caught in a vision that seemed to have very sharp
boundaries: This is all that the Bar will accept; This is all we can do to keep doing our funding;
a little good is better than no good at all. It was -- and a very dedicated people.

But I have to say they didn't -- they weren't doing much. They had never filed an appeal in
the United States Supreme Court. They had hardly ever filed an appeal in an appellate court.
They were not systemic in their orientation. Where as we -- I learned this in criminal defense
work. If there was a practice of police suddenly finding dropped heroin every time they came
after and arrested a defendant, you had to get at the pattern. You couldn't just do it case-by-case.
You had to complain to the Chief of Police, you had to make -- expose this in the paper. There
were many, many institutionally systemically-oriented problems in the criminal justice system
and that's what sort of got me started in thinking this way.

Q. As I recall, it was during this period that you met the Cahns, Edgar and Jean Cahn?
A. It was, it was in 19 -- {swallows drink} -- 63. I had reserve duty after my army and I fell
off a truck {interviewer chuckles} unloading latrine signs. We would go away for two weeks
and -- to {chuckles} the latrine signs were in these long, long, long, racks and we'd unload them
off the trucks and put them in various places because there was, there was -- we would, we
would go way on bivouac for huge periods of time. And the guy that was unloading the truck
with me dropped his end and flipped me off the truck and wound up at the army hospital in --
What's the name of it?
Q. Walter Reed?
A. Walter Reed. Yeah. Army Hospital; in the amputee ward. Because I needed, I, I hurt my back badly.

Q. Huh.

A. I tore up some disks and needed the traction. So I was in that ward where I talked to a lot of soldiers about -- They had amputations there. It was, it was rough. So I lied there for about six weeks. In fact I saw Martin Luther King's march on Washington from a bed at Walter Reed Army Hospital. And a friend of mine named Dan FREED [ph] brought me an article in draft and said, "You might be interested in this." And I read this article and as soon as I got out of the hospital, I called Edgar.

Q. Was he in Washington at that time?

A. He was. He was in Washington. He was working for -- I don't think he was working for Shriver. He was working for the head of the HEW.

Q. What did you say to him when you called him up?

A. I said --

Q. Do you remember?

A. Yeah, I said, "This is going to sound really weird." I'm a public defender, right? "I've been thinking about civil legal aid practice and I really like your article." It was still in draft. In fact I'm in a footnote for helping with it.

And Edgar, Jean and I used to meet at night and sort of work through the problems, the problems in the article and, and -- when it came out -- they acknowledged me. But we had -- By the time we worked through the article, we already had a strategy which was brand new to me, but Edgar had this all in his head. And Jean. A strategy to get the new Economic Opportunity
Act, which was passed in 1964. Be sure, not that long after that.

I mean, the March on Washington was '63. John F. Kennedy was killed in November.

Everything turned around in Washington and I helped develop this article and a strategy for getting the new Office of Economic Opportunity to start funding legal services.

Q. Now, describe a little more of your strategy. What did you see you had to do?

A. Well, it was Edgar's notion. Edgar's notion -- it followed the following pattern: You had to get Shriver to start speaking on the subject. You had to get other people in the liberal wing of the administration to start speaking about the need for legal services, along with the other needs.

The poverty program was beginning to jell and, every chance we had, we put on the table, that issue. He did that from the inside, because he was a speech writer and he could really, he could really write these speeches.

Then we had a number of conferences. There was a White House Conference on legal services; there was a smaller conference. He brought together kind of a group with Adam Yarmolinsky and Abe Chayes. They had a feel for how you move in the Washington veracity that I had, I had no idea about. And gradually we began to make headway. And Edgar and Jean felt that we need is support from private Bar. I said, "You'll ever get support from the private Bar, for federal, for federal support of a legal services program." And Jean said, "Oh, yes I will. I'll get Louis Powell to do it."

And, sure enough, they went; met with Louis Powell, met with John Kaminsky and met with the early, big-firm leadership, in the Bar who came around and, I -- it's complicated. We don't know whether or not the experience of the medical professional felt -- that is, Medicare and Medicaid were on the horizon. They're not passed in '65, but it looked like they were going to be
law over the objection of the American Medical Association. And I think that the leadership of the ABA felt this is going to happen and we should be in on it instead of fighting it, because the federal government is just going to do it in that atmosphere. And a lot of them, to their credit, really believed that we had to provide better access for people.

Now, the social change dimensions of legal services I think they had more doubts about, although they came around on it. But the need to have federal support to actually make some kind of dent in delivery of legal service to the poor? That was there from the beginning and we didn't have to persuade them a lot. So it's to their credit.

Q. Did you go with them to meet some of the Bar --

A. Yes.

Q. -- leaders or...

A. I was in on several of the meetings, and, and wind up as a member of the OEO advisory committee, which is made up of many of this, this group and the so-called reformers --

Q. And what did --

A. -- who wanted a more...

Q. Do you remember some of the people who were there? The so-called reformers?

A. Elizabeth Wickenden, myself, Bruce TERRACE [ph], who's a Washington lawyer, who wanted to do economic development for the poor, I think the advisory committee, we hammered out in the early years of the program, a lot of policy decisions that Earl Johnson writes about in Justice and Reform. What should be the industry standard? What's the right mix between direct service and -- Law reform really hadn't -- wasn't really expressed in the way that Earl eventually expresses it in '67, but it was there. I mean, many of us wanted to see an aggressive community
action-oriented legal services program. Others didn't.

Q. And what role was Sargent Shriver playing during this period?

A. He was guiding. He would -- he was guiding. He felt he couldn't do it without the ABA. And he was guiding this merger of the young critics -- and this big-firm Bar leadership who were coming around so there'd be, there'd be a cooperative view, and so it would not make war on community action.

The Bar -- many of the lawyers -- I was -- and this is a real minority -- really looked skeptically at community action, but I had gone from the, from the Public Defender to the United Planning Organization, which is a community action agency. I became deputy director of that organization. So I was involved the protest activity. I was involved in the federal money from OEO that went into housing and employment. And I didn't have nearly the same negative response. And argued hard for a combination program that was reform-oriented as well as --

Q. You didn't have --

A. -- as it...

Q. -- the negative response because lawyers weren't, didn't have their vested interest affected or -- what are you saying?

A. I didn't think it would a) cause a backlash against the program of the sort it actually did, but people were worried about that; b) I didn't think that the community action agencies would try to take over these nascent nonprofits that the OEO program would fund.

There was tension between them, but I thought it would, it would work out cooperatively. And I thought the biggest problem, which turned out to be the problem, was that the lawyers would resist actually working directly with community organizers and community action people,
not the other way.

Q. How did you envision OEO attracting lawyers to participate in the newly funded federally funded legal service program?

A. If the jobs are there they come.

That is, this was a long way before the Reginald Heber Smith program, before OEO really took a stand as to what the program should look like. And I didn't think we'd have much trouble attracting young people.

One, the salary gap was not nearly as great. I mean, a lawyer would start at legal services at oh, $4500 to $5000, I think, a year. That's where I started in the Public Defender. Justice department employees got $6000 a year. The firm started at $10,000 a year. I mean, it was a lot more, but now the starting salaries in the firms is 5 times what many legal service programs would start with, so, so it was not that huge an economic difference.

The country was, was filled with energy about actually doing something about poverty. Lyndon Johnson was a legitimate populist. He's a -- I mean -- I wound up protesting, protesting against him on the war and I was critical of him. But in retrospect, this man wanted real change in the country and I heard him give a speech. I guess it was, it was at Howard where you could - - The reality of poverty was so palpable for him in a way that it wasn't for many, many very supportive political leaders. He seemed to have seen it. Understood it. Felt it. It really caught my -- I mean, not many people say this, so I'm not sure I'm right, but I remember being very moved by him.

Q. What about Howard Westwood, who had been President of the National Legal Aid Defender Association, did you, um --
A. He was...

Q. -- meet with him?

A. Yeah, because the real conflict at the beginning was between the old legal aid societies, several of whom actually turned down federal money, and the new organizations that were being funded -- along lines that had to do with, "You're going to kill the legal aid movement," as they understood it. But -- but it was also about -- they -- we attacked them in a way you sometimes choose enemies in order to get energy for your own, your own vision. They were much more committed and much more stuck by the environments around me than we gave credit for.

In fact I remember I debated Mort(imer) Getzels at -- he's from the New York Legal Aid Society, -- and after the speech he said to me, "Gary," he said, "you may be right. But I guarantee you when you look back this program, it's going to look a lot like the legal aid societies you're now hammering us about."

Q. How long did you stay at the United Planning Organization?

A. I think just a year.

Q. And what happened during that year? What were you able to do? Or what change did you see happening?

A. That's tricky, because I'm not -- that is... We did a lot of protest. We -- I think we genuinely improved public housing in the District of Columbia; at least, got more money put in. We began welfare rights organizing.

I remember we used to have this, this -- one of my students has written about this -- We used to have rat campaigns in the District of Columbia where we, we would get an exterminator to come in and exterminate a whole block and there'd be a party and we'd get all the rats and put
them in the middle of the street.

I mean, I learned a lot about how you get publicity; how it works. And I learned a lot about the barriers to business development in low-income areas to the real difficulties of developing employment models that give -- that involve job ladders for poor people.

The problem is the money poured in too fast. We couldn't build institutionally solid programs. There was a lot of waste. And there was an unclear relationship between the protest activity and the programmatic development. And it turns out that the program -- the programmatic activity was more important.

We ran an entire school system; a subsystem in the Boston schools that included, I think, three elementary schools, one middle -- two schools, and a high school. And I learned a lot about what reading stuff seems to work, what kind of teachers teach. We were in Head Start programs.

It was -- it was my policy education, that only reinforced my notion that there was a clear connection between doing legal services work and thinking hard about policy.

Q. So --
A. Seems more tenuous now.

Q. -- what did you do after that year?
A. Well we've, we've skipped a lot of things that happened.

Q. Oh, well, let's go back then.
A. Alright. I don't know --

Q. What was skipped?
A. Well, I don't know. We, I mean, OEO funded, at the beginning, Clint and Earl Johnson
was -- had gone to school with me at Northwestern.

Q. Oh.

A. Clint appointed him the Deputy Director. Clint and I got to be really good friends.

Q. While you were in Washington --

A. While I was --

Q. -- at UPO?

A. -- while I was at UPO, and I watched him struggling over getting the Bar to come on. I think -- I mean -- I think Clint and Earl did an amazing job in those first, that first year-and-a-half when they got these programs started against unbelievably hostile opposition. And the program that had its own -- the policies that laid then the foundation for the overall, for the overall program. And it was Earl that I -- at UPO, I was -- one of our programs was the legal services program. I couldn't get it to change.

Q. You couldn't get what to change?

A. The legal services program in Washington. We had set it up as one of the programs that was funded under the UPO umbrella, just like community action agencies funded programs in New Haven and Boston and a number of places around the -- on the eastern seaboard that were part of the Ford Foundation Gray Area projects.

But the D.C. Program did some appellate work. A lot of landlord-tenant work. Edwards v Habib and Javins, but the cases were isolated from the day-to-day work, almost. The lawyers who simply did were not looking for anything but servicing --

Q. Were these mostly --

A. -- individual cases.
Q. -- staff lawyers?
A. Staff lawyers. And I wasn't sure that this model of a policy-oriented, direct action oriented, community action connected legal services program could really work and Earl said, "You know, there's a young lawyer in California who's setting up an organization called California Rural Legal Assistance that has been opposed by the state Bar. You might want to talk to him."

So I called up Jim Lorenz.

Q. Jim Lorenz?
A. Jim Lorenz, his name is. He was a Harvard law graduate, had worked for O’Melveny and Myers, left O’Melveny and Myers to develop this very large, statewide program that had offices from the Mexican border, to north of San Francisco; Santa Rosa.

Q. And did he -- did he do that because it was OEO money to support it? Or did he have other ideas for raising money?
A. He raised money from a number of sources, but the big issue was to provide legal services for farm workers.

How Jim got involved in that; that's another interview you'll want to do. It's a long way from his experience, as it was a long way from my experience.

But, but when I spoke to him on the phone, he said, "We could use somebody with your trial experience because we have -- we're getting a lot of young lawyers interested in this, but they can't do very much. Why don’t you come out and we'll get to know each other?"

And I came out and I liked him immediately. He and I went on a drive up to Delano to see Cesar Chavez, stopping at various places where they were picking lemons, where they were along the way; sat down with Chavez; told him what we were going to do.
This is probably, I guess it's long enough ago that we couldn't represent the Union and we
would not represent the Union directly and never did. But that we, we represented individual
cases that would take on issues of importance and relevance to the Unions and Chavez was
interested but skeptical. And Jim and I drove back and I was sold.

And I think it took me three or four months before I, off I went. In fact my mother was
better and she said, "You should go." She went to Florida and I went to, and I went to California
{chuckles} and started a new life.

Q. What was the basis for Chavez's skepticism?

A. Lawyers don't understand what he was trying to do. He was trying to build a community
movement. He had had some experience with lawyers. They always over-lawyerized the
problems, didn't involve clients enough, were not interested in organizing a local organization,
were too interested in winning and not interested enough in the experience that people had and
the way cases were handled. He was a very shrewd man, for having not been a lawyer himself,
but he really saw what I, what I had to learn --

A. -- over the next few years.

Q. And how much did you interact with him?

A. A lot. A lot. I'd see him every day and had some great experiences with him.

I mean, my wife worked at the Union service center. We would get many referrals from
the Union. They, they could be anything from divorces to consumer debt. And he'd say, "That's
a problem you're going to take over to Gary." I would take a look at it and sometimes I would
see that there was a pattern.

Some company was selling pots and pans on a door-to-door basis and suing when, when
there wasn't payment. They would sue in Los Angeles --

Q. Huh.
A. -- under a clause in the contract that permitted them to bring suit where their main office
was as opposed to where the sale took place.

No farm worker from Delano would go down to Los Angeles to a Los Angeles court. They
all defaulted and pretty soon their wages were being garnished.

I said, "You should --" I remember saying this to Cesar; "Do you have any other people
who are buying pots and pans that have judgments?" Well, Helen was running credit union and I
think a quarter of the credit union debt was wrapped up in people that had to pay judgments from
Los Angeles, so I took this case, brought a class action against the company {everyone chuckles}
and got them to stop. So that if they -- I altered some of their practices and I also forced an
agreement that there would be no lawsuits in either San Francisco or, or Los Angeles, but in the
county in which the property was sold.

Q. And did this...
A. That eventually became California law.

Q. And did this case and other cases get publicity in the California newspapers?
A. In the -- it started out in the local newspapers. There -- We weren't allowed to live the
Delano, which is where the Union center was.

Ronald Regan had, had -- was governor. He was strongly opposed to the funding of an
organization to help farm workers and the state Bar similarly opposed it -- the organization. In
fact I think the famous quote from the start Bar is, "This looks like a -- this looks like the
financing of one side of an economic struggle by the federal government." And Shriver, to his
credit, said, "I would hope so. That's exactly what we're trying to do."

And apparently Shriver -- I mean, I know Clint had some conversations with the California people and they funded. They continued to fund CRLA in the face of huge opposition both at, at county level -- we were sued I think in three counties in California -- and at the state level, and at the Board of Governors at the Bar level, and at the governor's.

Q. And you were sued by whom?

A. We were sued by the Stanislaus County Bar Association on the -- before we began taking cases --... on the ground that if we were allowed to take cases, we would act unethically.

There were a raft of these suites. I think there were 15, ethic suits around the country that, that legal service lawyers didn't solicit; legal services lawyers would be subject to some outside -

Q. Influences?

A. -- influences; that they would not be able to be loyal to the clients; that they would be over aggressive; that they would be under aggressive; they would... They would -- they lost them all, but it was a very, very hostile atmosphere.

Q. So a good deal of your energy must have gone into defending yourselves as an institution against these lawsuits?

A. Right. And that's how Jim and I made a split. He says, "We -- this isn't going to work. I will handle San Francisco, Los Angeles, and the outside Bar. You've -- (I had then moved to McFarland) You've got to help in the training and development of the staff," as well as being the one closest to where the Union was, was based. And there was a series of lawsuits filed.

This is, this is in a Kennedy School study, if you want to get a list of them or I could
probably tick some of them off, if I should.

But they began getting publicity in the Fresno Journal and the Bakersfield Times. And then, and then we began in many of the cases.

For instance, it was the policy of California to release students into the field during the picking season, to force convicts to go into field during picking season; to relax rules regulating bringing people from, Arizona and Texas to struck areas. In other words, everything -- this was a big fight about, the labor market at a time when they were struck.

Now, it's no surprise into our office walked a lot of individuals saying, "We've, we've gone on strike or we've, we're thinking of trying to organize a ranch committee but we can't do it because there's people who are waiting in the wings that they are just going to bring in and take our jobs. Can you do anything?" And we filed a -- from McFarland, we filed a serious of suits to stop the release of -- they closed welfare offices exactly at the time workers needed them on the ground that there were jobs. There had to be jobs and therefore you couldn't get welfare, which is not, which was not the rule at the time.

Those, those suits picked up publicity in the San Francisco and Los Angeles papers because Ronald Reagan was a defendant in a number of them. These are state agencies. And he always held a press conference.

And suddenly what Jim did really intelligently is the small -- the set of small offices up and down the California central valleys - suddenly began developing liberal support in the big cities in California. California's two different worlds. From the Mexican border to Sacramento in the center is a multi-billion dollar agricultural industry and a key to conservative political power in the state.
On the coast are relatively liberal -- much more liberal urban areas and much more cosmopolitan. You know, Orange County's not quite the same as San Francisco, but they certainly made differences. And we became sort of -- I don't know what you'd call it -- kind of the darlings of the, of the liberals of the big cities. And Jim would simply tell us when we were to come in from the field {everyone chuckles}. You know, hopefully reeking with dust and manure {interviewer laughs aloud}, right? To go to these meeting to keep, to keep the support up.

And I think if it wasn't for that alliance, we would have been squashed. Because who are -- who are these kids? And what were they doing? And they don't know what they're talking about, and there was, you know; there was obviously them -- these issues were more two-sided than we ever, than we ever painted them. And not everybody wanted to join the Union, but if -- if there was a clean case of a group that was left out because they were excluded from the National Labor Relations Act, it was the United Farm Workers.

Q. Now about these kids, where were they coming from and what were their backgrounds?

A. They were -- they were from a range of schools. We hired credentials. This is a very controversial choice we made, and it's not necessarily required, but Jim, I and a number of the program leadership decided that we should hire from people with credentials if we could get them: high grades, elite-type schools. Because we were so controversial, this allowed the California Bar to say, well, these, these are young people that went to, you know, reliably legitimate places and they are not all socialists and radicals. And we were very successful at it. We were very successful.

We had many, many applicants; way more than we could, we could possibly hire and the
people we hired did very well. People sort of drifted around some; they weren't sure what they were supposed to do and then gradually began to really take on in their own areas issues. So in, Modesto the program stopped Ronald Reagan from cutting a major chunk of what's called MediCal the affected farm workers who were, who had injuries in the field. And we sued the Department of Labor.

Willard Wirtz, who was bringing Braceros into the country in violation of the Immigration Act, where there was a large settlement. There was a lot of litigation and the litigation was different in each of the local offices and the degree of connection with the Union was different in the local offices although the claims that we represented wasn't sure.

It's just like the claim that we were soliciting cases. That -- they just misunderstands what it was like. We -- the offices were full of people. You didn't have to solicit cases. All you had to do was interview and the patterns there to be picked up.

Q. Did you intersection with Governor Ronald Reagan at the time yourself? Personally?
A. No. I had some intersections with Ed Meese, who -- which apparently he never forgot. He was the person in the Reagan group that really dealt with us, and there were some meetings -- they came.

Q. And what were they like?
A. They were cordial but extremely distant. That is I couldn't tell whether the administration was doing it because they wanted to be able to answer "yes" to the question, "Had they met with these -- with us?" Right? Or whether they were actually curious -- interested in working out some accommodation. I think it was the former.

I think there was no real attempt -- Right? -- To talk about -- I mean, when they would
layout their objections, the objections didn't make any sense in terms of what we were actually doing.

Q. I know you have written about and taught in your classes the importance of involving the client as a partner in deciding how to prosecute the client's case. When and how did you develop that concept.

A. Well I've -- I mean -- I don't know exactly when it was, but I can name a person that had a lot to do with it.

You know, I think you partly, learn that from criminal defense work where the reason for doing it is to protect this individual. And I always felt from the very beginning that I didn't just decide. I mean, the stakes were very high. People could go to jail for a long time. I tried to involve them in the strategic decisions I was making. So I had a background that my instinct went that way.

But it was, um, a Union member named Ernest, Ernesto Loredo, that said, "You know, you still do -- you're still too much a lawyer." Right? "You don't do enough teaching. People are not leaving the work you do knowing a lot about how the law works or what you can do with it. They know you're good, but they...," and he really hammered on me.

He- I'll give two, two examples that he, that he brought. He was around and we were having cases. By this time we had cases from Button Willow and Arvin and -- I mean these are places you would, you know, you would -- no one who'll ever watch this tape probably ever heard of -- and Wasco.

He drove me down to a little town called Wasco where people had really bad drinking water. There was something wrong with the connection between the main water system in this
little town and the section of Black and Chicano residents. A little section of maybe a hundred people, I don't know, 30 families or something like that, that lived there in a, in a connected set of houses. And the water was just awful and, and when they opened it up it would -- junk would come out. Right? And they had, they'd been complaining for a long time and no one did anything, and I said, "We need to go to the public utilities commission." Right? Bring a claim against the public utilities commission and we need to try and get this water company to do something about the pipes.

It turned out the pipes had to be torn up and replaced because they'd gotten so moldy and rotten. But Ernesto said to me, "You can go to the public utilities commission. Most of these people have never been out of Kent county. Right? They'll just go up there and watch you. Why don't you get someone to come here and talk to them -- and talk to the clients about what they want to say."

Now, you would think I would know that. It’s not that I didn't know that, but he reminded me. It isn't that I couldn't have given a speech on it, but I didn't think of it all the time. And so I had a meeting in a church with these families and I talked about Ernesto's and my conversation. And said, "If you want me to try and get the public utilities commission to come down here or even anyone else, I will try to do that; and then we've got to plan what we're going to do."

And someone said, "We don't want the public utilities commission to come down there. We want the water company."

Q.   Hm.

A.   We want somebody from the water company.” I said, "Okay. And what should I say to get them down here?"
"Tell them that we are -- we have a lawyer. We're going to sue."

This comes from the clients, right?

"But we want to talk to them first."

And they said they'd been meeting all day, before my meeting with them, and one of the things that they wanted me to do was, they wanted me to make this meeting not soon. They wanted it in about three or four weeks because they wanted to collect samples of the water.

Now, that was from the clients.

Anyway, for -- we got a -- Ernesto and I went out a bought a huge number of empty milk bottles which you could get, you know, from the, from the place that delivered milk. And we gave them out and people filled them up with water and dated them. So some families had 15 of them {chuckles}, some families had, had {chuckles} ten, and I got the Vice President of the company to come out here on the grounds that we're not going to the public utilities commission. We're going to work it out with you if you are in good faith.

And they came. And they sat at a table in the front of this room in the church hall and people, one right after another, brought up their bottle, put them on a table in front of them, and each one talked about what they'd gone through. And I looked at this Vice President and he looked at me. He said, "You won your case." He said, "We're not going to have publicity on this."

And, sure as hell, they had an appraiser out, I don't know how, I don't know what -- who does the...Pulled up the pipe, found out what was wrong with it and gave them a new water company.

That came out of Ernesto and the clients.
He then took me to Linnell/Woodville. Linnell/Woodville was the public housing project that the Joads go to in *Grapes of Wrath*. And it's in that. And there was a rent strike going on, because they raised the rent I think $7 a month or something. I met with the tenant, they were, -- the company was the -- Tulare County Housing Authority was planning on just locking up these shacks.

You could always tell a kid that grew up in Linnell/Woodville because they had these open gas heaters and every kid that ever grew up in Linnell/Woodville had scars on their arms from falling against these open gas heaters. And, it needed -- we needed better housing. And they -- that's what I suggested by this time. And Ernesto says, "What can we do?" And I said, "Well, there's a lot of facts we need to know."

Why haven't they fixed it? Why haven't they, why haven't they covered these gas heaters? Why did they raise the rent? Did they really have an economic problem or do they have a large money in reserves, which is something the client said? And I took depositions in the rec hall in which I treated each of the families as a client. They all came into the rec hall, and whatever would give these questions that I asked.

That was the first time in maybe fifteen years that the public housing authority had to respond to the questions. People were so hard, you know. I mean, what I saw was, there was -- you get, there were -- there was an experience in doing case work that's as important as the legal outcome. And by the time I finished my -- I mean, Ernesto said, "You're getting to be a good student."

So... {laughter all} I, I had a feel for how, for how this works, and it did work. And many of them joined the Union after that because they liked the experience of collective action, they
saw what it could do with each other. I mean, it is not an accident that in the 1974 Legal Services Corporation Act organizing was prohibited. Just like we had at every CRLA office voter registration materials. Voter registration in 1974 was prohibited as a service that legal services could provide.

We became extremely controversial, but I learned a lot about delivery. So that's my interest in the clients.

Q. Well, looking at the legal services movement over those first heady days, as it is evolved over the years, as it has drawn controversy and opposition from people like President Reagan and others, what do you see as -- today as significant developments, both positive and negative?

A. Well, how have far up do you want to go? I mean, the elimination of the infrastructure in legal services. It's not only restrictions. The elimination of the backup centers, the clearing house, the national support centers, is, the regional support centers is a disaster. Right?

Legal services was a system and it mixed a lot of different functions and it missed -- mixed a lot of talents of different kinds of people. So the recent assault on legal services, which doesn't leave room for virtually any kind of, of support in some areas. Alan Houseman feels it does, but I think the, that it produces a pall on the program that's very bad. On the other hand I think a legal services program was put in place that will last and grow and it will go -- it will take different forms.

I mean, Earl Johnson, did not support organizing and group representation as the major, as the major focus of legal services. He rightly pointed out that most lawyers don't know how to do it and don't do it well. And he also pointed out that it was the most politically volatile of the various forms that legal services would take and he came down on the side of law reform. That
was a brilliant move, because law reform gave lots of room for the social reformers, but it also
was much more acceptable to the Bar supporters than the kind the thing we were doing at CRLA.

In fact, there were a lot of wise decisions made that were not necessarily the one, the vision
I had for legal services that I look back on and I'm glad that we had the balance. Glad we had
talented people with different views. Glad they were willing to argue them out. And glad on
some of them that I lost and glad -- and not so glad that on some of them I lost, because I think
the program has lost some of its energy and some of its some of its commitment to do something
about the systemic problems of the poor. And at the same time has lost some of the energy and
some of the commitment to individual client service.

See, I've always felt that they fed each other and that you couldn't do one without the other,
but both had to exist and had to exist at very high levels of quality. That did not take place. The
more experienced legal services lawyers moved to the law reform activities denigrating, I
believe, the direct service. I mean, there was -- there was nobody for the young lawyers. There
was no one to teach the young lawyers who came into legal services programs all through the
'70s. And, although, you know, the numbers dried up some, that's always been the case. We pull
our best people, people out of direct service, leaving the "helpers" to do what is highly routinized
work. Well, there's no reason why it should be routinized. It's a different job.

Q. Do you see that pattern continuing today?
A. Yeah. Yeah, as a matter of fact I see it more in than continuing. It's locked in to a
particular narrowing of possibility, which is very hard to sort out, because the program has been
under assault for so long. I mean, the budget was cut in 1982. Every time the budget begins to
go up again, there's another attack; most recently 1996. It's very hard to know whether that
mentality that that breeds produces a kind of drawing back and an unwilling -- unwillingness to try out new things.

It's hard to know whether or not you just get worn down by the amount of need on a basis or people find ways of living with the job that need some leadership and some energy that the programs aren't -- do not -- does not have.

Q. And would money alone bring back that energy?
A. I don't think so. We'd have to do a lot of new things.

Q. What kinds of new things?
A. We have to reinstitute training programs. I think we can, I mean, we can't do the same training programs we were doing with this heavy policy oriented, but we have to improve the quality of practice. There has to be a much tighter and better relationship between the law school clinical programs and the delivery of legal services. I really think the legal services people missed the boat on the possibilities available in clinical education in the law schools, because like everything else, clinical education in law schools has stopped growing. But there was a window where it was growing extremely rapidly and needed the connection with the outside offices.

There are 30- to 40,000 law students graduating each year. Never has there been more than 6,000 legal services lawyers in the entire United States. We had a chance to capture a huge amount of resources if the legal services people were willing to supervise.

Now it's true you didn't have, you had to be willing to give up the direct work. You had to take on that job as an important job and the programs didn't do it. Has to be reestablished.

So for law schools make deeper commitments. And there's more, we have to, we have to
do something about turnover.

Now, it's interesting. In the '70s I said we had to do something about turnover and I meant there was too much. Now there's too little. We've got to open up the doors. I mean, this doesn't mean I don't think that the people there aren't wonderful. It's that it's not -- you need new blood in a system. You can't get so locked in that only the most inexperienced people can be hired because there's no money to hire people at the middle range levels and we have to find ways of moving people into small-firm practice, which would do a lot of even paid pro bono work. I think we have to institute a Judicare program -- a substantial one. It would get the support of a large amount of the Bar and we have many former legal services lawyers who could go -- who could go into private firms with that kind of subsidy; could create private firms with that kind of subsidy. We can't deliver, you know, anything like a largish volume with a staff system that never had more than 6,000 lawyers. We have to change the ratio between lawyers and paralegals. And this is a long; this is a long tale. We have to do something about mandatory pro bono that doesn't make the Bar at odds with the legal services. Practiced legal services people are extremely ambivalent.

Q. What's your view about mandatory pro bono?

A. I support it.

Q. You do?

A. Yeah. I support --

Q. Are you, are you not concerned about the client having a lawyer who is less than enthusiastic and less than committed to the client's cry?

A. I think the legal services client has many lawyers who are less than enthusiastic in this. I
think the quality of practice has gone down enormously, and I don't -- in my own experience
with people who do it.

I think that I would allow BUY-ON [ph]. I don't, think that, that I would have some
releases and I would have different kinds of mandatory pro bono that meet both the willingness
of the clients and NYNE.

Mandatory pro bono does not have to mean either/or. It can be a complicated system of
assignments in which people take action. I mean, I'm against the idealists who say, "I should
never be required to do anything." But it's perfectly reasonable to have differential requirements
of people and, and to make sure the clients are protected.

And legal services has never been willing to have the joint work -- First of all, they've not
been willing to give up the high-publicity cases, but the firms do the high-publicity cases
extremely well and the legal services people are needed in the offices to make the quality of
practice and day-to-day. Once the quality of practice goes up and the private firms go into
offices with standards, they will do extremely well. That's what, that's how they got them -- they
made it in private practice. I don't believe it. I don't believe there is this huge body of expertise
that only staff attorneys can do. It's disingenuous.

Q. How did you feel about mandatory pro bono in law schools?
A. I'm less interested in it because the law school models have such a small amount of
commitment. I mean, maybe it's okay. I probably would vote for it if Harvard proposed it, but I
think in law schools we have to train people to practice. We have to have much more extensive
work for the poor.

The message that this is charitable again only revisits the old Legal Aid Society weakness.
This is hard legal service -- this is hard lawyering work. It's hard to do it well; it's hard to do it thoughtfully; and it's hard to doing it -- do it over time.

I mean, you saw yesterday, right? Those students were really struggling with what you'd have to do to do well in the in the two cases I showed them on the video tape. So I would like mandatory clinical. But mandatory pro bono in which they have a little taste? I'm not against it but I'm not, I'm not enamored of it.

Q. When did you start teaching?

A. I started teaching in 19 -- well, I, in 1968 I left CRLA. I actually left CRLA to do legal services -- to do legal work; not legal services work -- legal work for the Union. And what Cesar said, I mean, by that time I was really committed to being an organizer, Cesar says, "Go to Los Angeles and do the legal work the boycott," because the boycott had started. But they paid five dollars -- the Union pays five dollars a week. {chuckles} He said, "Get a job that will pay you. Get a job that has an office and a telephone. And get a job where they'll let you do it."

I went to the University of Southern California and I said, "This is what I'm going to do. I'll be glad to try. I'm very interested in trying to teach young people how to do this work," because we got, we got unbelievable amounts of commitment from young lawyers, you know, in their third year of law school or their second year, and they couldn't do anything.

Q. Did you go to the Dean of the Law School?

A. I went to the Dean of the Law School. In fact, the Dean of the Law School is; who was it then? Oh, this you have to cut out the tape because I -- she'll be mad if I forgot {chuckles}.

Dorothy Nelson.

Q. And she encouraged you?
A. She encouraged me. So I -- the arrangement I made was I would try to set up a clinical program at USC that they had actually a history of. Earl Johnson also -- they had a clinical program under a guy named John Bradway many, many years ago who had many of this, these ideas.

I discovered, sort of a treasure-trove of material on John Bradway in the Harvard library. I was astonished that it was -- it was a... He taught at Duke and the University of Southern California and started a clinic many years ago. It had gone out of business.

CLEPR money was, that’s the Counsel of Legal Education Professor Responsibility, was just coming in, and it was agreed that I would try to set up a clinic in conjunction with the local legal services program, and start the process, which I eventually taught here. At the same time was going to work for boycott, which I did.

Loved USC. Wide spectrum of political ideas; a lot of differences of opinion; a willingness to argue with each other that didn't involve denying that there were human beings on both sides and you can differ. We went to each other's classes; we took on issues in front of the students. It was really great, and there was an organization called the Western Center on Law and Poverty, which the university had gotten and one of our clients, through the head of it, Derrick Bell, was the head of the Western Center on Law and Poverty. Derrick Bell took on the Black Panther Party and I became counsel to the Black Panther Party in L.A., now with several others. But I did a lot of work for the Black Panther Party at the same time, partly fed by Cesar's desire to have people working for him to have connections with urban African-Americans.

Q. What were some of the issues you were dealing with then --

A. Well, the biggest thing --
Q. -- in the Black Panther Party?

A. The biggest issue was a call from Chavez within a month of me coming to Los Angeles saying there was a shoot-out in Los Angeles and two Panthers were killed, two police officers were critically wounded, and a young boy, 18 years old, had fled and was hiding out as a fugitive; would I go to see him. And Cesar said, "I want this connection. This is a good thing for us to do, for the farm workers to send a lawyer to lend help is a great thing to do. They are really in trouble."

And so, out I went to this, to this church, where I met this kid. He was just -- he's, I mean, he was scared to death.

There was a dangerous armed -- right? So he was afraid he was just going to get shot right on the street and I made an arrangement with the Court to -- for him to surrender. He was terrified of being in the custody of the LAPD. He agreed that he would be in the custody of the sheriff's department. And I went to this judge and the judge agreed that it would be done after hours, the LAPD would not be notified, and she would then, she could deny bail until we made motions for bail and that he would be placed in the custody of the sheriff's office.

We laid out in the back of a Volkswagen bus; come across the city together, his uncle and me, and his name was Anthony Bartholomew. We get out of this bus and we start walking up, there's a big vista in front of the Los Angeles Courthouse. And on all sides there's LAPD; armed LAPD tactical squads. And down the stairs walks three LAPD policemen, all with their gun unholstered, that -- with their hands on it. Right? Looking at us and Anthony, who's an -- was just a kid, right? He starts to run.

Q. Oh!
A. And I grabbed him literally {chuckles}. I'm telling you, my hands would've gone right through his arm, right? I said, "If you run we'll be dead." And so I just held him and everything's -- I mean, all the guns went up. You could just see them around.

And I went up and I went in the front of the judge. I was strip-searched. And I gave one of the angriest arguments I've ever given in my life. And I explained to that judge that's why the courts aren't trusted -- because you don't keep promises; because you're so sure that the other side is lying that you're creating a spiral that will never end. There's going to be more violence. I was furious. Just furious. I was furious enough that she ultimately let him out on bail. And then a year or two later I tried the case again on acquittal.

Anyway, that issue caused the head of the Panther Party in Los Angeles to contact me and I got involved in a whole bunch of other stuff, which is a long, complicated story, not without its downsides. And in the middle of all of that, I get a call from, Derek Bok, who had just, was then the Dean but was soon going to become president of the university, saying, "We hear you're doing some very interesting things in Los Angeles. Would you come and show us how?"

I think what happened is, there was a protest here. The students did a protest. It was mild by anything that we -- by any standards that we had in California, but it really shocked this faculty. And the students said, "Your education's irrelevant and you should get people who have actually done things." And I think they began looking naturally for Harvard law graduates, right? Who knew something about street work for poor people.

I mean, {laughter all} it was a very small pool. {more ebullient laughter} Maybe there were two of us? And I got invited to come.

Q. To give a speech or --
A. No, --

Q. -- What?

A. To come for a year as a visitor. And I think my wife at that time was clearly ready. I mean, we had done the farm workers and then we did the Panthers and continued doing the boycott with the farm workers; and she wanted to move. And I think I did, too.

I came here. I had a good experience teaching and they asked me to stay. I told then-Dean Al Sachs I'd stay for five years, and help him build a clinical program here. Started a Teaching Fellow program with money from CLEPR that actually, placed a good many clinical teachers from around the country in positions to -- starting the growth of clinical programs. A very -- this was a very good group of people and they did interesting things in the, and have continued to do interesting things. And five years later I went to the Dean and I said I'm leaving and it...

Q. And why? Why did you do that?

A. Because, it didn't -- this isn't what I wanted to do. What I wanted -- I like day-to-day neighborhood work. I don't think I've had a year until I went in the hospital where I didn't do twenty or thirty of my own cases every year from 1961 on. That is, everything I've been describing I've always done my own as well. I like clients. I'm interested and I learn from it. And so I was going to go back to a neighborhood office and Al Sachs said to me, he said, "What you would you like to do? I don't mean what would you like to do here, I mean what would you like to do?"

I said, "Well I think the thing that's most needed are legal services schools." I mean, institutions that will bridge the gap between the absence of training and legal services office for, offices for new people. And the law schools research that touches none of the, of the theoretical
and policy issues that you need to deal with to do something about, about poverty.

And I had gone to Tom Ehrlich, who was then head of the Legal Services Corporation, and told him, this is what we need. It was, it was sort of built on my analysis in an article called, "Turning Solutions into Problems" [NLADA Briefcase, vol. 24, no. 4, 1977] and he was very interested and agreed to fund one at Harvard and consider funding ten others around the country. And it was opposed by every single legal services program in the United States.

Q. Because?

A. There was testimony -- Hillary Clinton was then Chairman of the Board. It was -- they said I was wrong about the critique; that the quality of practice was much better than I had said. May be right. That the needs were not for internal training in the offices. The needs were for more resources; that this would simply channel a certain amount of legal services money out of the expansion of legal services and lawsuits were rich enough and should do it on their own. This is how, you known, as you know, I think that was -- these are mistakes. I'm going to write an article about this.

But I was, it was in good faith. It was well thought. They really disagreed and there was a parade of opposition that the Legal Services Corporation brought up opposing the funding of this. But Bob Kutak was on this Board. I don't know whether Hillary Clinton was the Chair, but she certainly was on it and asked a lot of good questions about it. And the Board voted to fund it.

So we started, then we came -- in the meantime, Harvard -- Al Sachs said, "We will match --" I think it was 1 to 3, "We will match funds for a legal services institute at Harvard Law School." And I took the position that it had to be available -- open to other students besides
Harvard students. And Al Sachs took that to the Harvard faculty and the Harvard faculty voted unanimously to support a 25-person institute in which every single course was taught at site. So we had the entire third year in which clinical work and classroom work was integrated.

Anybody who came -- there were students from the University of Maryland, there were students from a lot of different schools and there was a -- the most students -- there were a lot of students form Northeastern, with whom we jointly did the program. The bulk of the students were Harvard students, but, at least, almost half, were from other places as well. I think Northeastern did have about a third, and the faculty supported it and hired as the first Legal Service Institute faculty, Clint Bamberger. Did you know this?

Q. No.

A. Clint Bamberger, Jeanne Charn, myself. And we, for a couple of years, really started down this path of an integrated experience in which you do housing work and you study housing policy; you do welfare work and you study welfare policy. And anybody who came there had to agree to do two to three years of legal services work afterward. And all, virtually all of them did.

And then in 1981, January '81, Ronald Reagan became President of the United States and this was cut off. Funds for this were cut off, oh, right after. Early in the spring of '81. I think we had money to carry us through '82, and Harvard would no longer keep this going without the federal money but they did say if you want to build a Harvard program, continue to do it. And I stayed and did it.

Q. So it had to be limited to Harvard students after that?

A. After '82. This is, that is if we're going to put a lot of money into this.

Q. Have you seen, any diminution in interest in students in the last, um, well since '81?
A. It's gone up and down. I think --

Q. How?

A. I think, I think student culture is variable and I don't really understand all of the ways in which its ebbs and flows change. We at first attracted the most radical students, then it became known that this was very good education, and useful. And as the firms have become less interested in moving each person they hire up to partnership -- partner. And it think it's, I think it's the case that at the end of 8 years, fifty percent of Harvard leave the firms they're with and go into smaller firms. We got a wave of interest in professional education, then I think there's been changes in which professional education has been not as important in the Harvard curriculum as graduate-type education; something that I'm at war with.

I think like everything else you have to integrate the two. This is a big school and students need both to understand the practical and the theoretical the same. But it's changed as the leadership for the program has changed and younger faculty's interests have changed as well as the students sent up -- the firms that have, have...

The debt is so high and the firms have offered so much at the front-end that we're having trouble, having people jump into this when they're afraid they're not getting the courses they need to do the firm work.

So we are in, we are in the throes of a lot. I don’t believe that. I think this is generally an important way to be educated, and we'll turn around. We're in the, we're in the middle of another set of changes within the clinical program, which is very large. I mean, over 300 students a year do actual client work, and if you add simulations it's in the -- you know, in too, it's probably 80 percent of the class does some work like that. But I like the client-oriented work and that's, that's
the stuff we want to expand to 400.

Q. Three hundred students do clinical work with you or in various clinics?
A. In various clinics that we've created. The program is much larger than the-- the Legal Services Center is the largest institution within the clinical program, but it's not the only one. We have a criminal justice institute at, which is run by Charles Ogilvy, which does criminal work, right? We have an immigration center; refugees and immigration center that does that kind of work. We do place some students at the attorney general's office who are interested in government work.

Q. And did the rest of the faculty members in these clinics share your vision that practical hands-on experience is as, is as important as the theoretical?
A. Well, not as sharply as I, as I think I would articulate it, but yeah, I think they do share it. Now there are different versions of it. Some, a number of members of the faculty allow clinical placements in their course because they feel that the clinical work deepens the students' understanding of the doctrine and the policy, but it's a perfectly reasonable -- right? If you see the way the institutions work, you understand law better as a human enterprise. Others have a greater interest in the students actually learning skills and professional development and it's at that end that we're making the changes.

Q. Do you intersect with clinical programs around the country?
A. Yeah.

Q. In other law schools?
A. Yeah, but we're a different model.

Q. And how different are you? In what ways?
A. Well, people claim we're very different. The biggest difference is the clinical movement -- this is, again, my -- these are my views, right? They’re all, I mean, all, almost all of them are disagreed by many people; easily disagreed by many people.

Most of the -- fifty percent of the clinicians in the first round in the 70's, late '70s early '80s, were legal services people. I think what happened was the vision of legal services and the law schools having a joint enterprise in which students would learn a lot about doing pro bono work and legal services would, would increase their capacity to do; that fell apart. And I'm a -- I mean, there's a long tale about who, who was at fault and how it happened. But that left the clinicians in ambiguous statuses in the law school where they were not treated like real faculty, and they felt it. Their move was to strengthen their positions at the law school by creating clinical tenure or insisting on regular tenure or enlisting the Bar on protecting them on long-term contracts that had elements that were like tenure. It was a perfectly reasonable move. The problem is it set an upper limit on the amount of clinical work you can do through that model, that meant we have about 30 percent of the students in the United States actually doing hands-on client work and it won't get any bigger because, because the clinicians have insisted that every time a law school hires somebody, that person be a regular member of the faculty in some way.

The Harvard model, which is a huge school, right? Fifteen-hundred-plus students. What we have is we have 36 clinical instructors. They are not members of the faculty but they are teaching practitioners who work in the clinics and connect to the courses. I think the clinicians feel this is a major threat to the model that they've evolved in other parts of the country and there's been a lot of tension between the "So-called Harvard" model and the rest on the ground that we both weaken their position in other schools and it is not -- you don't get as good an
education. Now what it is that turns the clinical instructors, all of whom are talented lawyers and pretty good teachers, into something different because they do or they do not have clinical tenure, is, you know, it's one of my disagreements. But it took it is controversial.

It turns out that many, many schools are starting to add staff because they can't deal with the demand and many students want to actually learn how to do this. Otherwise, you know, maybe not at Harvard where there's a, where there's, as much at Harvard where there's a pretty sharply defined career line. You go against the grain when you don't, when you go to a different one. But in many schools in the United States, you're going to wind up in a small firm and no one's going to teach you. And so there's a lot of demand around the country and there isn't enough teaching resource and supervision resource. And maybe, you know, this is the question of... There's no doubt that the clinicians were badly treated by the regular faculties; that they drew this line of theory and practice, which I don't actually agree with. I mean, practice has theory and academic theorizing has a practical dimension. It has to have something to do with the world that it operates in, although sometimes I wonder.

And it might change because, because schools are, many schools use teaching fellows and other kinds of supervisors because the Harvard model is big -- I mean, we would -- we couldn't add 36 people to the faculty. The faculty only has 70 members. This faculty would not, and I can't say I blame them, would not add a huge number of people with the faculty in those numbers. And I, if anything, I want more. So we just chose a different model for the circumstances that exist here and I think it's a more workable model for the nation, but we're a long way from it.

Q. But you say they are -- other schools are adding staff? I assume you mean --
A. They are starting to add staff.

Q. -- non -- nontenured, staff?

A. Nontenured staff or non --, um, they're part-time. They're short-term. I think -- our clinical instructors, some of them have been here a very long time, and do very well. They are experienced teachers and supervisors. It's a question of whether the profession can evolve a new role of a teaching practitioner. We do not have enough mentoring in the profession generally. We have people, people who learn just so much from bringing them to training programs or bringing them around the table to discuss something or partners' lunches. You have to mentor people. You have to watch their work and see what are their patterns emerging and show them and supervise them and give them feedback. I mean, we need a lot of teachers in the legal profession and that's not been a tradition.

Q. And you do that for your students in your clinical program?

A. Right. And the doctors do that; and the social workers do that; and the senior teachers do that. We're practically the only profession in the country that doesn't deal -- the practical application of the professional work has got to have guidance from experienced people. It just can't be learned in a classroom. I mean, we try, we did our best yesterday, right? And I think it was pretty good, but if that's all the students were experiencing, it would go away in no time.

The reason it had some bite is that, and they're actually counseling clients; they're actually seeing clients; they're actually struggling with this. And if I can get the supervisors to really open up... In other words, the teaching goes on all the time. The clinical instructors translate what goes on in the course. Now it depends on what the teacher wants in the course, but it...

Q. Well, if you were to look in your crystal ball, as we close this interview session, for the
next decade, do you have any predictions? Or do you have any hopes and wishes for what might happen?

A. Well, I just touched on a big one from my perspective. There's something, there's something about the experience of human service, whether it's people who work in nursing homes or teachers in ghetto schools, or -- that just wears people out. They don't feel valued. They don't feel that they are growing. They don't feel that there's places to go after what they're doing. I don't high hopes for this, but I certainly, for as long as I can do it, I'm gonna hammer on this, because the profession, quality of practice in the profession, is generally very bad.

One of the things that throws the students somewhat is as much as they need to know, there are many practitioners that are out there that have been doing it for 20 years and they don't know anything. They never look up a rule; they never look up a law. And we see it every day. And so you get comparisons that actually are erased on the bottom, in which each one compares themselves to the least competent. So my hope is that the Harvard model will actually have some influence elsewhere and I'm gonna, I'm gonna clearly write about it.

In legal services delivery itself we have to get freer of these restrictions, because it's a pall on the program. We have to build back both an infrastructure and a less restricted operation and new people coming in. It's much of what I said for the last whatever, whatever it was.

There's still a lot of needy people out there that don't, that don't ever get any help, I mean, by the millions. And although, not in my lifetime, will we solve it. We need enclaves; programmatic initiatives where people can use paralegals more; try to involve the private Bar more; experiment with Judicare more. Let go of the single models that we've had and have multiple models.
Q. And what about systemic reform? Do you see the legal service programs continuing to provide leadership in that or do you feel there's a new --?

A. Well, you know --

Q. -- order?

A. -- what's happened? The federal money in many parts of the country has been turned down because of the restrictions, and they're going forward, with non-federal funds and are doing a good deal of the, particularly the, the law reform class action work, much less the group work and the organizing work.

Now here's what I'm worried about. I think it's naive to believe that the state of local funding will simply permit the most controversial of the legal services methods to stay exactly where they are, funded by IOLTA or -- I think we're going to get a, a backlash that says that the federal government won't fund it, why should the state of Massachusetts fund it. And there will be fights at the local level. So it's a very unstable situation.

I don't believe we're going to have -- anyway, they think that will preserve this kind of systemic-oriented, and I think until the federal government -- at least until an infrastructure is put back in place in which there's training capacity, there's clearinghouse capacity, there's large-case litigation capacity, I don't think we'll be doing a lot of, a lot of systemic work. Although there's a lot of systemic work to do.

The courts are less receptive. The problems are more complex. The matter-of-fact oriented problems as opposed to law interpretive problems is much greater, which means you, you need much higher levels of trial skills to put on these kinds of change cases. The sense that it's all been used up and it's in the past is just palpable and loaded with nostalgia, which is a
shame.

This is work to be done right now and it could be done well, although we need other fodder. I mean, need creative ways of presenting these issues. I mean, one possibility, for example, is you can do impact work at a day-to-day service by focusing which areas you work in and hammering on local institutions. That hasn't really been tried. We have several examples of that in Boston that worked very well, but it hasn't been tried as a national -- as a national model. So that might happen.

Q. Give an example from the Boston experience.

A. In the 1980s -- Well, can I tell a story?

Q. Sure?

A. Okay. Javins, Edwards v. Habib, we had our own version, okay? BHA v. Hemingway, and then I worked on a, on an amicus brief on a case called Berman v. Jefferson that established the right to get damages for breach of, for breach of warranty, on and on; there's a panoply of protections.

In 1980s, early 80s, we were just coming out of the institute. We were doing the regular program. I represented a women, in fact, one client came in and said, asked me, to go to this woman's house. And I go, and I go to this woman's house and I knock on the door and she's a 55-year-old Hispanic woman who lives in this apartment because it's right near where her children live. And every -- the entire apartment is clean as a whistle and everything's in boxes. And she's sitting there and she gives me a cup of coffee, and she says her name was Petra Rosario. I'm sure; I know she once said you can tell, you can tell this story.

And she says what many tenants say, and I hadn't done Boston cases in the landlord/tenant
area because I’d been focusing on welfare, and disability, though I had done a lot of them over my lifetime. She says, "I just want a couple of months before I move." And it turns out there are all kinds of code violations in the house and I call up Greater Boston Legal Services and say, "What do you do with this kind of case?" Lawyer says, "Aw, the best you'll get is two months. You agree to move out, you'll get two months without, without rent." And then I called someone from Cambridge/Somerville Legal Services; same thing. You know, the judges won't give damages; it'll be unresponsive; you won't have a chance.

I get into the court, and I am in mediation with a mediator and he says, "You're going to get killed. The judge is going to rule against you; she's going to be out in no time; the guy was offering nothing." And so I sit down with him and we become friends. I said, "I don't -- I'll tell you honestly, I have not tried a case in this court." Mind you, this is Boston Housing Court.

"But it seems to me they are offering you very little. We can probably delay it long enough for you to get two months. Do you want to take a chance?" And she says, "I do. I'll come with the one who brought me."

And, so I tried the case and I won. I didn't win huge amounts of money, I won three thousand, four thousand dollars.

Q. Arguing code violations?
A. Arguing code violations and I kept her from being evicted, but I got no -- nobody believed you could do that. And it was obvious that the judge was going to apply the rules. He once said to me some years later, he says, "No one ever raised these issues."

The program had just settled down. Well, we knew that we could do this. The question is, could we do it in large numbers? It's a question of could we -- we certain couldn't try every case,
but if we tried enough cases and the reputation was if you go to court with these people, you'll wind up having to pay money and you won't get the client out anyway. Then the people -- then the settlement allowance would change. One of the reasons I had to go to court was the guy wouldn't offer anything. So we declared an eviction-free zone, leafleted an entire area, and said, "We will try your case. If you want to settle it, you can settle it. If don't want to settle it, we'll try it, but we will give you aggressive defense and we'll do it always in one court: The Boston Housing Court." You could transfer from Boston into the Boston Housing Court.

And although it's a longer story, in some cases we appealed and increased the exposure of landlords. In other cases we got tenant organizations started and in many, many cases we tried the cases and won exactly the way I won so that the aggregate effect in the atmosphere of the Boston Housing Court was a reputation that you ought to settle these cases. Once people start settling, the pattern solidifies. And so, by having a bunch of cases strategically handled this way, we didn't do anything different than I did in the individual case, but we did case after case, talked up what we are doing from the clerks, won....

Jeanne and I are going down in an elevator and there's, there were two lawyers in the elevator at the Boston Housing Court and one of them says, "Yeah, you're better off, you're better off settling. Unlike going to trial, you’ll really get burned and settlement means the client's got to stay there, although you might be able to save yourselves some damages."

Q. When was this? When did you do this?
A. 1980 -- I think, I think this went up to '88.

Then the judge changed at the Boston Housing Court, the staff changed, the market changed. I mean, I could give you a long history as to why it didn't work as well for the while
but, that's what I mean by aggregate impact. We did the same thing in a welfare office. We just took case after case after case at the local welfare office, and every time I went down there I talked to the social -- the case worker about why she's not reading the regs right. And after winning several hearings and giving her the hearing decision, which by the way is rarely done, we turned her around. She called up and she said, "you know, I don't know a lot of these rules. Would you spend some time with me?"

This is, this was direct product of doing case after case but making her feel that she wasn't, evil, but that she really had to learn these rules better. It wasn't fair to people.

And I did a training session for her and two others workers that were in the office and helped them out constantly and we increased, or rather, decreased the amount of terminations that were going on in that local office. They eventually closed the office.

Q. This is very reminiscent of where we started in the criminal area of Washington, D.C. when you were at the -- first at the Legal Aid Agency --

A. Absolutely.

Q. -- and had to change the whole mind set of a lot of people and bring case after case and get the --

A. Right.

Q. -- your fellow -- your colleagues into that --

A. It doesn't --

Q. -- or suggests perhaps that, that's an activity that is ongoing?

A. Yeah. It's not amenable to class action. It doesn't work as a class action. The ordinary resolution processes of the court; you can't get a handle on them in the same way, but you can do
impact.

Q. Well, I think we will close there. Thank you very much --

A. Okay.

Q. -- Gary Bellow for --

A. Good, we did, we did two hours.

Q. -- speaking to us today.

A. Great. You can stop.

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