Interview with

Marshall Hartman
Parts 1 and 2

Conducted by James Neuhard

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James Neuhard (JN): . . . National Legal Aid and Defender Association. Today is November 15, 1990. Marshall, let’s begin this interview by just you talking about, this may be an arbitrary place to begin, but law school. Why did you go to law school, where did you go to law school.

Marshall Hartman (MH): How are you, Jim. The law school I went to is University of Chicago and I went there because I lived in Chicago. As a child I rolled down the hills of the Midway and that’s where I went to undergrad and law school for seven years. I thought of no other school ever. That’s the only place I ever applied. I viewed that as the best school in the country that I could afford and I enjoyed the undergraduate school a the UOC very much. The law school allowed me to meet some very important people in the criminal justice field like Francis Allen, Norville Morris and some others but I really tried to specialize in criminal law there.

INT: Why?

MH: I don’t know somehow I felt that is what a lawyer did. Watched movies of Clarence Darrow, a lawyer helped poor people, helped the
underdog, tried to save people’s lives, argued in court. That is what I always
wanted to do. It’s interesting when I started school they asked me what kind
of lawyer I wanted to be and I said told them criminal law and the Dean of
Admissions said to me well you’ll grow up, he said when I came out of
school I did admiralty, you’re probably end up in some corporate work.
You’ll get that out of your system. But I never did.

INT: Where did you work in the summer?

MH: Well those days they didn’t have nice projects such as we set
through the Defender Association through NLADA. I worked as a
counselor in a summer camp every summer, I went to a Bible camp in the
summer, worked on getting some advanced degrees in Judaic studies but
there were no law jobs available for anybody in the class I guess unless their
parents were in those days unless their parents were in law firms or
whatever.

INT: What year was it?

MH: I graduated in ‘57 so I went to the University of Chicago from
1950 to ‘57. But out of that experience grew a desire I mean I felt very
jealous of those law students who had summer jobs in law firms in the
summer and when I came to NLADA as I did later one of the projects we
developed was a program where law students could work in public defender
offices during the summer and be paid for them and that was one of the early grants that I worked on and it arose out of my experience in law school in being a summer camp counselor and feeling that I you know missed something. There was no public agency that I could work in and I really had no great interest in corporate law ever.

INT: Was there anybody in law school who had planned to become a criminal lawyer back then?

MH: Out of 200 young people in our class only one other person went to criminal law. He became a prosecutor in Los Angeles. All the rest were corporate lawyers.

INT: So what happened? You graduated from law school then what.

MH: I went briefly in the Army and then I had my first job at juvenile court. And that was a wonderful job because

INT: How long were you in the Army?

MH: The first time six months and later I was recalled.

INT: You got out, you graduated and spend the first six months out of law school in the Army, did you do anything with law in the Army at that point?

MH: No.
INT: So you got out of the Army and went to Reserves then you got your first job

MH: Yes.

INT: How did you get your first job and why, why did you go there?

MH: Well I had had a lot of background in group work and I wanted a job that would combine my group work and psych in the law. Working with kids in youth groups, helping kids develop both religiously through the synagogue and also their social and psychological skills and attitudes.

INT: And your undergraduate major

MH: My undergraduate was liberal arts but I always worked through the United Synagogue Youth, through B’nai B’rith Youth with kids, first as a member and then as president and then as kind of youth leader. And by going to juvenile court I thought I could combine law and psych. So I went there and this is pre-Gault, they said there are no jobs here for lawyers, there are all social workers at this court. So I said it looks like a good place for me to go. So they wouldn’t hire me the first week but then after I went there something must have happened because a week later an ad appeared in the law school bulletin board saying young lawyers interested in criminology may apply at juvenile court. So I went back, I guess the head of the juvenile court probation department was a lawyer, he must have I can just see his
secretary saying to him some idiot was here was a lawyer wanted a job here, I sent him away. He said no, no, we ought to have lawyers here. It’s very important because there were no lawyers at juvenile court in those days and because of the experience I was asked to work on the amicus brief In Re Gault, the first juvenile case to reach the U.S. Supreme Court.

INT: What year was that?

MH: Oh ‘67 or so. I was then working at the Cook County Public Defender’s Office and Gault was up and the people at the National Legal Aid and Public Defender Association asked me to work on the amicus brief primarily because I had worked in juvenile court, and out of that experience arose my sincere belief that lawyers were needed in the juvenile court and we couldn’t just leave it to the social workers to run the court. But I’m getting ahead of myself. I spent several years at juvenile court first as a juvenile probation officer with the caseload where I simply worked counseling kids. But it was also very good legal experience because since there are no lawyers there the social workers or the probation officers actually acted as the lawyers. In fact among the probation officers were a half a dozen lawyers who had those jobs. And what I did was get a chance to cross examine witnesses, argue with the state’s attorney, put my witnesses on the stand just like a lawyer would do in court. And then when we weren’t
in court I was counseling the kids using psychological counseling. After two years I became assistant to the presiding judge and after that I became head of the legal department and advisor to the county. So I stayed in juvenile court about five years.

INT: The legal department to what?

MH: Well of the legal department of the juvenile court at that time and acted as guardian ad litem for children and acted as defense counsel in court before there were public defenders there and

INT: How did you get those promotions, Cook County was very political, very much patronage system was that prevalent in the juvenile court at all?

MH: Not really. Unlike the adult probation which was all political, there is some recognition that you needed people of some merit to work in juvenile court. Most of the people who worked there came out of the Catholic social work schools in Chicago or were people like myself who came out of Jewish youth organizations or Jewish children’s bureau and were motivated to work with children. The pay was low, the caseloads were high and politicians didn’t want to work there. In fact, one political person worked there and he said to me after a couple of days he said Marshall I’m not going to work here you have to work in the job and he then got a job in
the highway department where every day at lunch time he drove 25 miles
and painted a white strip, white paint along the road, then the rest of the day
he was free. In the juvenile court you know we worked 60-70 hours a week.

INT: As you went up the ladder did you have to curry . . . merit all the
way

MH: No. Yeah it really was primarily because nobody ever wanted
these jobs. I mean I don’t know how to explain it but here I am a probation
officer and an opening develops for assistant to the judge, so the presiding
judge asked some of the lawyers who are there if they wanted the job. Most
of the people didn’t want any more responsibility, they wanted to get out in
private practice and the job was a simple little job which had a nice title but
it had no power. However I accepted the job readily. By the time I was
through two years later I had a 11-person department. I had all the other
lawyers there working in that department and I was probably de facto the
third most powerful person at the court after the chief judge and the chief
probation officer because what I did with the job was to end up advising all
the probation officers on legal matters and giving classes on law and
juvenile matters and I also backed up everybody. So if a probation officer
took my advice and got in trouble I would go in and see the judge who was
sitting, they had a lot of judges there but I was assistant to the presiding judge and I back the probation officer.

INT: How many judges were there, what was the size of the system back then?

MH: We had somewhere between seven and eleven judges in those days.

INT: How many would they have today?

MH: Now I think 37. But anyway but my reputation was that I would back up the probation officers that I had given advice. So in the morning it was like a butcher shop I had 50 people waiting to see me in the morning and they wanted to go over their cases and I advised them and they knew it was a guarantee if the judges gave them trouble on something I would come in and you know and back up my advice. Anyway it was a wonderful experience and when I left there because of a poker game. I had applied to the Cook County Public Defender Office around the same time I applied to the juvenile court. I was told you needed political pull to get in there. So I was just on a list but an opening developed at the public defender office and one of the supervisors at juvenile court was friends with the deputy public defender and they were both black and they had a poker game sometimes around 1963 about November 11th and at the poker game the deputy public
defender said you know there is an opening in our public defender office
know anybody. And the juvenile court supervisor’s name was Malison, said
yeah there’s a young fellow at juvenile court named Marshall Hartman he’s
always wanted to be a public defender and why don’t I send him over. So he
did that’s how I got the job. I went over and I was introduced to chief deputy
public defender, name was John Branyon who was a tremendous lawyer,
tried cases with Clarence Darrow and had he not been black would have
been public defender. In those days the blacks didn’t have enough juice
political juice in Chicago to get it. So he recommended me and I was hired
as a public defender. And so I started the year of Gideon, December 7, 1963
as a public defender.

INT: How big was your office?

MH: The Cook County Public Defender was enormous in those days,
it had 12 lawyers. Today he has 400. But that was right before Gideon.

INT: Did they handle all the cases that were assigned?

MH: No they handled only felonies.

INT: And did they handle all the felonies or

MH: I don’t know I think they did but they handled felonies and there
were 12 of them and I occupied seat number 12. Then January 1, 1964
because of Gideon the office doubled to the enormous number of 24. Still
handling felonies but also now beginning to handle appeals as a result of Douglas v. California and so an appellate section was created. I was still in the trial courts though. Thereafter they merged with the city and began to do misdemeanors and all the other cases as well. So today there is 400 public defenders in Cook County. But in those days we had a small office of 12 and they were pretty good lawyers but they were all pretty well politically connected.

INT: So between ‘57 and ‘63 you worked at juvenile court and you said you went back in the Army at some point.

MH: Well ‘58 to ‘63 I worked at juvenile court, but in between I had a year to go back into the Army during the Berlin crisis and during that period when I came back from the Army after a year the guy who had had my job in the interim the day before I got back so I was reappointed assistant to the judge to a new judge. So the juvenile court experience was very important one in my life because many of the ideas that were prevalent in the juvenile court in those days were ideas which later crept into the criminal justice system in the adult court. For example, a major portion of the work in juvenile court was alternative sentencing. Many of the kids who were caught admitted their guilt readily and many of the kids who came into the juvenile court had already been adjusted station adjusted we’ll say numerous
times before and there really was not a big question of guilt or innocence in the juvenile court. Although I did act as defense counsel in some cases and won some cases. But in the majority of cases the question was what is best for the child what should be done. And as a probation officer my early training was to find some program for the child, get him in school, get him a job, get him vocational training. Drugs weren’t a big problem then but alcohol was and often parents problems, not so much sexual abuse then but a lot of physical abuse occurred especially when parents were drunk and psychological counseling was very big. So I was trying at an early time to think about dispositional kind of alternatives and preparing dispositional assessments and programs. I was guardian ad litem for the children I worried about those things. So that early training in juvenile court prepared me for some of the modern concepts which are now in the adult court of mitigation sentencing, dispositional alternatives, a duty and obligation of a lawyer to do more than just preside over the guilt/innocence phase of the trial and work on that alone. Other ideas in the juvenile court then were sentencing notions. No mandatory minimums, they did determinative sentencing which for a while was prevalent in this country. Also there is a tradition among those people who worked in juvenile court of training and merit advancement and of being professionals even though they are very
underpaid. Most of the people there were working on their masters in social work, or going to law school at night. And many of them had come out of programs where they worked with kids. So there is a very good grounding for the criminal justice system. I also had read a book about the careers of people successful in criminal justice and many of them had started in juvenile court. So I was very happy with that experience. But in any event the end of ‘63 I became an assistant public defender in Cook County.

INT: How was the average when the office started to grow how were the PDs hired, the methodology by which you got the job, you mentioned didn’t have enough clout to get the job and then you met a friend at the juvenile court got you a job but

MH: He recommended me to Getty who was the chief public defender but I don’t really know how they were hired. I do know that in Chicago then they had a committee on help which was a committee of judges that was supposed to approve all hirings. But Gerald Getty who was the public defender was very independent of them and he refused to some of the people through the committee on help and he hired some people on merit. But what was most striking about the job was the lack of training. When I got the job and I never forgot that in fact many of the things I did in NLADA later arose out of the horrible experiences in Cook County Public Defender and mind
you the people who worked there I thought were good people. They were
top notch trial lawyers, they were people who wanted to do good things but
the system was so bankrupt of any notions of law office management,
training, development, merit promotions that it was beyond all belief. Let me
give you a couple of examples which later influenced what I did at NLADA
and also in Illinois. I said the first problem was training. I went to see the
chief defender after I was hired. I said to him look I’ve got a week or two
before I’m going to start, could you recommend something for me to read so
that I could prepare for being a good public defender. He said yes, why
don’t you read the Illinois Reports. This seems like an amazing story but
then I was just out of law school and I had gone to the University of Chicago
Law School I was prepared to write a brief for the U.S. Supreme Court but I
had never tired a case. I had taken criminal law but I had never put together
all the concepts of criminal law and procedure into one case. They had just
been theoretical cases that you read. Palko v. Connecticut and others. So no
like an idiot I begin to read 26 Illinois 2d I still remember the book that I
read and it took me a book to read that Illinois Reporter. Since there were
then some 400 I realized there was no way in the world that this method was
going to work. And so I was plunged I started on the first day and it was a
wonderful system. I arrived and somebody said Justice isn’t here, those
words meant nothing to me. I arrived for work right. Somebody oh Hartman you’re the new defender, I said yes sir, here I am, is there somebody I can, yeah just go down to the civic center and handle this post conviction petition. I said what is that. He said don’t worry you’ll figure it out. You went to the University of Chicago Law School didn’t you, sure. I said I don’t have my car, he said take a bus down there and handle this file. So my first morning after 15 minutes orientation, 15 minutes to sign my name on the pay sheet I am now off to some court alone handling a post conviction matter. I get there to the courthouse and I’m introduced to some nice man in a suit who turns out to be part of the state’s attorney. I said sir I’m kind of new here. He smiled, oh don’t worry son I’ll take care of you. His name was Robbie Robbins he had been a former prosecutor at Nuremberg and he said don’t worry about a thing, you got the petition here, I said yes, he said okay he said step right up, they called the case he said sui generis motion to dismiss, granted, sustained. I said what happened. He said son congratulations you handled your first case. I said well sure it’s sure nice of you thank you to show me the ropes here. Well there is a commentary not of my stupidity although that is apparent as well, but on a system which would send an idiot, I mean I had a license but an untrained lawyer into court not knowing what the post conviction petition was about
not having reviewed the transcript, not having interviewed the client, not
having revised this poor inmate’s . . . paper petition which was what it was,
and allowing the state’s attorney to say motion to dismiss because if there is
a state of cause of action or whatever and I never did find out what he meant
by sui generis except that post convictions were sui generis, or I was sui
generis whatever but all I now the case is over and this poor client is
finished. And there I am. Now to show you this is a great success story,
four days later I was given a felony court . . .of my own. This is no tribute to
my brilliance, they didn’t even know my name there. It was simply the way
things worked and this particular judge had a courtroom where no public
defender wanted to be. He had been a former FBI agent and he maybe he
thought he was still an FBI agent I don’t know but he was on the bench, they
called him the third prosecutors in the courtroom, they had two prosecutors
and one public defender assigned to the court. And they sent me up there
and here we are ready to go to trial on these cases. Now to show you my
arrogance which I apologize for to this day forever to all clients of the world,
another lawyer did say to me Marshall you’ve got a jury trial now, I still
remember what kind of case it was, it was aggravated sexual assault, strike
that aggravated incest. He said Marshall do you want me to sit with you
during this trial. In my arrogance now that I had received a felony court in
five days or four days I said no I don’t need anybody. What do you, you just . . . okay so he watched me but he didn’t sit at this conference table and I proceeded to go I mean I had seen movies, picked a jury and the state put on their witnesses which is a little girl claimed that her father molested her and she was wearing a little you know white dress with lollipop, a Sunday school prayer book with her and then I was doing pretty good I thought and then state rested and the judge said proceed Mr. Hartman. So I turned to my client and I said do you want to testify and he said hell no. And there the jury looked at me, like what do you do next. Fortunately for the client God protects idiots, sailors and first-time lawyers. Not knowing what else to do I called his employer as a character witness on chastity. So the employer got up on the stand and I said can you tell us about the man’s chastity at work. The state objected, they said how does he know anything about chastity so they took him off the stand and there was the end of my case. Now the jury went out, the state’s attorney laughing, ah there is one more thing, at that point the defendant decided to take the stand. He takes the stand, I still remember this, and so he testifies briefly that he didn’t do it. So the state’s attorneys says to my cross now sir the day of the indictment where were you if you weren’t abusing your child where were you. Were you at work that day. The defendant says I don’t remember where I was that day. The state’s
attorney says did Mr. Hartman your public defender ask you where you were the day of the indictment. He says no. I was sinking lower and lower in the chair. He didn’t as you, no he didn’t. No further questions. That’ the end of the case. The jury goes out, out and out and the jury is hung. The judge can’t believe it, the state’s attorney can’t believe it, I had been praying to God saying God get me out of this you know not for my sake but for this poor defendant’s sake. The jury comes back and they say this, the reason we are hung is this. That employer was on the stand, Mr. Hartman had to bring him in, if he wasn’t at work that day the state’s attorney should have brought that employer in or while he was here say to him did that guy work that day or was he home abusing his child. If he wasn’t at work you know that would do it. So later I asked the defendant where he was. He said I think I was home I had a cold that day. In any event a hung jury. From that experience I asked Mr. Getty if I could be director of training because I never wanted anybody to go through what I went through i.e., read the Illinois Reports, handle a sui generis post conviction or something without knowing even what it was. I we didn’t study this in law school. We studied corporate reorganization not sui generis post convictions and then through a jury trial without any training whatsoever.
INT: So you’re not at the office and obviously it starts to grow and at some point you requested to become the training director. How did you learn about NLADA?

MH: Well NLADA was located in Chicago at this time at the American Bar Center, on the south side of Chicago near the University of Chicago, so I knew about American Bar Center and frankly what occurred was that my wife went to work at the American Bar Center for Uniform Commission of State Laws and her friends, she was a secretary, she worked as a secretary there although she had finished college, her friends worked at NLADA and so she knew about the organization plus Gerald Getty’s son Mike Getty, Gerald Getty was the public defender his son Mike Getty was hired by NLADA to be the national director of defender services, actually didn’t have that title it was called director of defender division. And so we knew them you know and I was very interested in that program. They announced they were going to hire a defender for the first time and I was interested in NLADA

INT: What year would that be?

MH: Well around ‘64 ‘65

INT: You were working at the PD
MH: Yeah but see I knew about it because of that connection. But you see also I was very dissatisfied with Cook County Public Defender because as I said of the training and I was interested just organizationally always in things. Anyway I stayed at Cook County Public Defender til about 1970. Now during that period several things occurred which were important. One was that a case we won a case in the U.S. Supreme Court called Smith v. Illinois. Now the reason that was important for this discussion is that I was the one who got cert on that case with James Dougherty who was then the first assistant public defender so it was my case and Dougherty helped me. And when we got cert granted that gave me a lot of credibility in the office and so I didn’t argue that case, Jerry Getty wanted to argue it, he was head of the office and he had never argued a case but I flew to Washington with him on that. And also about that time the people at NLADA Mike Getty had asked me to work on the Gault case as amicus curiae and I flew to Washington for that case.

INT: By that you had become an appellate lawyer within the

MH: Yeah I had stayed for two years in the trial court or so and then after I won a big case in the trial court I felt very incomplete, we never used any law in the trial court, I mean I never did, you just got the facts of the case and you interviewed witnesses and you argued. I was very unaware
there was a whole body of law I mean it seems it seems silly for a person who went to law school but you know I’m just telling you the truth I didn’t really apply it that way. So I went to appeals. We had three people at appeals at that time. And I’ll talk about that in a second but I went to appeals and but when I wrote the amicus brief in Gault and when I got this case of Smith v. Illinois in the U.S. Supreme Court, a case that we won, and we worked on the Richard Speck case, Richard Speck was a person who allegedly killed eight young nurses and I worked on that case with Getty and I acted as chief on the trial and then as research person and then I acted as chief counsel on appeal in Richard Speck. All of those were in the ‘66-‘67-‘68 era and plus the fact that I worked late I found, I never was an early bird but I found that a lot of decisions were made in the office after 5:00 o’clock and that’s when people talk informally, you learned a lot of law and I never raced out of there. For all those reasons I came to Getty’s attention and then I had a lot more credibility in the office and so when I asked him to make me training director he said what is that.

INT: What year was that?

MH: In that era, ‘65, ‘66. I asked him to make me training director. He did it and then I proceeded to set up a training program in the office. And the training program was very simple. I was in appeals at that point and I
wanted a week of training. I didn’t always get a week but I got sometimes three or four days with people and during that period I would give them cases to read and talk to them about Supreme Court cases and try to give them some recognition that we were going to we were constitutional type lawyers, we were going to use U.S. Supreme Court cases. To show you how far behind the office was they had no library at that time in the Cook County Public Defender Office except for Illinois Reports. I said what about United States Supreme Court Reports. They didn’t have it.

INT: Was the office located at the criminal courts building?

MH: Yes, yes in the court building

INT: Was that the one on California Street

MH: 26th and California, that is the trial division but they had no U.S. Supreme Court Reporters in the trial division or in the office in the library so people would read the latest Illinois report, there was no thought of looking at the U.S. Supreme Court Reports so I got a couple hundred dollars and I bought a used set for the office and established the beginnings of a library, established the notion that we could go beyond Illinois law. I mean it sounds crazy to say that but they had never won a case in the U.S. Supreme Court before I got there although they had filed some appeals. Remember this was before there was an appellate division but if anybody wanted to do an appeal
it was they were really trial lawyers and they wanted to take their own case up. So I became training director and I would do some training.

Let me talk to you about appeals for a minute. In 1965 they formed this appeals division. I was still in the trial court but at some point I asked to move into appeals and it was an amazing morass of confusion. There were three people in appeals, I was the third. The first two were excellent lawyers, one was named Fred Cohen, the other Jim Dougherty who later became public defender for Cook County. I walked in there. They said get to work Hartman, we don’t want any of your fooling around here, you know, I said well, how many cases are you guys doing each, what do you do. They said don’t worry about what we do you just keep working all the time and after you finish one case you do another one. I look around the office, all over the office are files, I mean transcripts, all over the place, it’s like one little office, transcripts all over. I said how many do we have of these. Fred Cohen we don’t know how many we have, dig in and work don’t ask all these questions. I said I don’t know about that, let me look at this. So I paid no attention to them because I could see they were killing themselves and for me doing one more case I could see it was not going to help. So what I did was to establish some kind of count of all the cases and then I noticed they were counting the cases they had transcripts for but we were really
responsible for every case to which we were appointed. Many of those cases were sitting in the court reporter’s files and they hadn’t filed the transcript yet. So I began to get a sense and a count of all of the cases to which we had been appointed at that point. Then I wrote a memo to Gerald Getty in which I said this. Dear Mr. Getty, We now have three lawyers and half a secretary. We need 22 lawyers immediately and 5 secretaries, otherwise we will be 1,000 cases behind in appeals with a wait of three years. Also I did one case, I reversed it, the man spent three years in jail for a rape which he didn’t commit and he wrote me a letter saying thank you Mr. Hartman for nothing. I told everybody I was innocent, I wasted three years of my life here and now the appellate court is letting me out. It was just too long. Three years is just too long. So anyway I organized the numbers, I told Getty we need more staff. He laughed but I showed him the numbers and I became the administrator of the appeals division. We moved downtown to other offices and pretty soon we had our 22 lawyers. And so that was my experience and we built up, Dougherty and I together, Fred Cohen left but Dougherty and I together pretty much built up the appellate division. And I tried to have very bright lawyers in the appellate division and it was always a battle because lawyers would come in, I would say well where are you from figuring they were going to say University of Michigan Law School, University of
Chicago, no, I’m from the Water Works, I said the Water Works, what do you mean by that. He said I was a lawyer in the Water Works but it went Republican so now I’m out and they assigned me over here. So I would grill this poor lawyer about Simmons v. U.S., that was my favorite case to grill them on. I would say what do you think about a guy who in the motion to suppress says it’s his narcotics and then at the trial the state wants to use that against him. What do you think. If the lawyer would say that’s right we should have truth in the courtroom, I threw him out of the appeals division immediately. I figured if he couldn’t understand the tension between fourth and fifth amendment rights I didn’t want him as my lawyer. Although he might be a nice fellows besides. So I tried to winnow out the people who came in and tried to set the notion that it was an elite division. And Getty said nobody wanted to go to appeals and he said you know go ahead Marshal get who you want, you can recruit. So by the time I was through it was an elite division. People like Ted Gottfried who is now the state appellate defender of Illinois, people like Paul Bradley, Shelvin Singer who is now a judge in Cook County, Jim Gramenos who is now a federal administrative law judge, all those people were in that division and we tried to recruit people who were bright and could understand the appellate process and how you write and argue.
So I spent several years then in the appeals division. Until about 1969 about that time I got itchy. The reason was that a new agency arose on the horizon called LEAA, Law Enforcement Assistance Administration and Gerald Getty by this time I was very close with Gerald Getty. By this time I was administrator of the downtown office, which was the appeals division and several other offices. And Getty was on the west side with the trial division. So he is appointed to the board of the Illinois Law Enforcement Commission, which was the state planning agency of LEAA. And whatever he would come downtown I would take him out to lunch and we would talk and spend the day. So Monday he came downtown and shows me this letter. He said I don’t know what this is. He said it’s another one of those damn boards and I’m going to go the meeting. I said well can I go with you and see what this is. And he said sure come on along. So we walk over to this building near the downtown office and I attend the meeting with him. We come out of the meeting I say this. And it’s a formation meeting, they have no money yet but they are being urged to you know prepare a grant applications and John Irving is the director. I say this, I said you know there is money here for us and Getty no what do you mean. I said listen to me. This money is here to be given away to people in the criminal justice system. You’re on the board, we should be filing for some grants. Then he said do
whatever you want. Go ahead. So I called Pat Hughes who was then working NLADA and I said Pat they’ve got this new agency called the Law Enforcement Assistance Administration, can you give some advice on how you file a grant application or anything to them. Pat Hughes said no Marshall nobody knows anything about it, why don’t you do one and we can tell everyone else. So I called then Ted Gottfried to my office and I said Ted, Ted was a very fine lawyer in my view, I called Ted in and I said Ted how would you like me to prepare a grant application for this thing called Illinois Law Enforcement Commission it’s part of LEAA. And so together we drafted the first application, Ted and I. Ted said how can you do this if you don’t know what you’re doing. I said don’t worry I checked with Pat Hughes nobody knows what we’re doing. So Ted the day will come when they come to us as if we’re experts. He laughed. So we sat down, we did a one paragraph grant application. We asked for $10,000 to do a survey of indigent needs in the state of Illinois. And you had to have some match for this so I matched the secretary in the outer office at Cook County PD, I matched some lights, furniture, in those days you used what you called creative match, well nobody knew anything then. I would just match what was around and I signed my name and I think it had to be approved by the chief judge of the circuit court whose name was John Boyle but I didn’t
worry about that. I either signed his name or printed his name with my initials, I mean I was always honest but I think I just printed his name in. And we filed it. And we received the grant to do the study. And I hired people


MH: Yeah and I hired people like Joe Jarofsky who had worked at NLADA and had had me do a speech on the Supreme Court the prior year at some training seminars that NLADA had received and I had and then I detailed people who worked in the appeals division to go down to visit counties down state. Sent Ted Gottfried, removed him of his duties in the appeals division temporarily and sent him down state and some others Paul Bradley sent him down state, another person named Mort Zwick and Shelvin Singer, that was the team I assembled and we just did this little study. And whoever was on the county payroll I didn’t pay any more money but anybody else I paid the enormous sum of $50.00 a day per diem plus food and receipts. Then when the study was completed we prepared it and we filed it.

Now about this time I went to a meeting of the Illinois Academy of Criminology at the University of Illinois at Champlain. At the meeting the speaker was named John F.X. Irving who was the director of the Illinois
Law Enforcement Commission, the state planning agency for LEAA. And he discussed the concept of state plans and the fact that LEAA required a state plan from every state. And he talked about the various components of the system. And I knew him because at one point he had been involved with the juvenile court college and with NLADA somehow and I knew him from before, he wanted me to work for him at one point for the juvenile court college because I had worked in juvenile court and worked on Gault. So I offered him a ride home in my car which was then a convertible and on the way home, my wife was there too, on the way home he said to me Marshall what if I gave you $20,000 to do whatever you wanted to do with, what could you do. Could you write a book you know about criminal law for Illinois. Like Hartman’s Handy Guide which was some book I had put out on having to do with summaries of reversals in Illinois cases. So we talked about it a little bit and as we drove in the car we talked about what I would do with a million dollars to improve defender services in Illinois. And by the end of the trip he had agreed that if I came in for a grant for a million dollars he would give it to us or he would give it to me to improve defender services and Irving is a very fine man, John F. X. Irving and he had an interest in defense as well and he felt there should be a balance in the system. So I parlayed that into a three year grant of $2.5 million and he
wanted us to do something in Cairo, Illinois, it as an interesting side light.
One reason he was so interested was that there is a situation in Cairo, Illinois
where blacks were being discriminated against and being arrested and
locked up in jail and there were no lawyers to get them out. There is a Rev.
Koen who was not Jewish, I think it’s K O E N who was a black minister
who was running an economic boycott in Cairo because of discrimination.
The rumors were that even the prosecutor and the judge were somehow
involved with white supremacy groups, groups called the White Hats, it was
never proven but that was the rumor. In any event what was true was that
black leaders of the boycott would being arrested on site, charged with
disorderly or something and locked up in the jail. What he wanted me to do
was set up a trial defender office in Cairo and then we would represent these
people. I however bargained with him and said look that’s not all I want to
do. The survey we just did shows a great need for appellate work in Illinois
and nobody does appeals in Illinois except in Cook County where we have
an organized appellate division. The figures were something like 74 percent
of the defendants in Cook County took appeals if they had trials or they
usually pled guilty. And down state it was 40 percent or 47 percent and all
the appeals took a long time. So I agreed with him, we negotiated until I
agreed we would do the trial office in Cairo if he would give is money for
six other offices around the state to do appeals, to respond to the other districts. And we got a book too which was the first one I had done. And we would have students and we would do all kinds of things. So I then felt we needed an organization to do this. So I decided we should a group called the Illinois Public Defender Association and I conferred with Jerry Getty about it and he said oh there is a group called the Illinois Public Defender Association. I said there is, how come I never heard of it, I’ve been a defender for five years. He said well it’s been inactive for the last five or ten years. So I simply called a meeting of public defenders in the state and I went to Junius Allison who was then director of NLADA. I said Junius can you give me $100 or $200 so I can host a dinner for these people coming in from down state. I mean they’re driving to Chicago the least we can do is serve them lunch. So Pat Hughes interceded for me and convinced Allison and they gave me the money, NLADA put up the money for the Illinois Public Defender Association. And we treated everybody to lunch and there were 11 people there, we formed the Illinois Public Defender Association again or we reformed it, Getty was elected president as the biggest public defender in the state, I was elected secretary, other officers were from down state, both Democrat and Republican and away we went. I now had an organization to receive a $2.5 million grant from LEAA, the largest grant in
the country from LEAA at that time and the first major grant out of block
grant funds. Shelly Portman in California had received the grant out of
discretionary funds for social workers in his state. I never knew who was
first he or I but in any event that was the first block grant distribution to
defenders. We were written up in the New York Times, we were written up
all over and everybody was watching us and watching John Irving because
people said what are you giving cop money to public defenders and they all
criticized John Irving for it and because of that he was very close to our
project and I had admittance to his office on a daily basis. If I had a problem
with that project I would walk over to the Illinois Law Enforcement
Commission, I would say Marshall Hartman is here to see John Irving, the
door is open and he let me in no matter what he was doing. And that
probably saved the project because he gave us very sound advice during this
period. I didn’t know how to be a project director. You know I had never
done that before. How to deal with the government funds and bookkeeping
and the GAO and all that stuff. But you know they helped us and I give him
credit for doing that.

In any event we got the money for something which we called the
Illinois Defender Project and it had several goals. One goal was to set up a
series of appellate offices consistent with the appellate districts in the state.
Another was to do a trial office in Cairo for nine circuit offices and then another thing to do was to have students and we had a lot of students that we paid in the summer to come work at our offices. After three years of running that project as the Illinois Defender Project we had two things that occurred. Number one we were informed by the Law Enforcement Commission that unless we made it into a state agency they would no longer fund us and we would be out. But they said if we could get it to be a state agency then they would fund us for another year with federal funds. So the same group that had worked on it Ted Gottfried, Paul Bradley, Singer, we lost Wick at this point, and I was the co-project director we planned now to have to introduce legislation in the state. I helped draft a bill with a lawyer whose name was Linda West and we drafted the bill for the State Appellate Defender of Illinois. We sought no political favors from anybody especially since we had both Democrats and Republicans in our association. We drafted the bill and we sent up in this bill the concept of a commission form of governance for the project. Now that was important for this reason. Again it arose out of my experience in Cook County where the judges ran everything. Where one judge had said to a public defender after a very severe case son why are you working so hard for this client, you work for me, why are you fighting me. He put his arm around the defender. The
defender later told me he wanted to hit the judge in the mouth but he didn’t. And we’re a committee of judges called the Committee on Help he had review all the appointments in the Cook County Public Defender office. I did not want to have that judicial domination, I didn’t want to have what Getty and Dougherty had in Cook County which was when they submitted their budgets they had to bring it to the chief judge. If they hadn’t played ball with the chief judge during the year the chief judge would not approve the number of slots they requested. So that they had to submit to the chief judge as a rule. I wanted to avoid that. By setting a commission in Illinois for the State Appellate Defender we would now not have to go under the Illinois Supreme Court to the legislature we could go directly to the legislature for funds. Also I felt that by having a commission we would allow some input still by the appellate courts who were used to appointing the appellate lawyers. You know they’re going to give that up. And my theory was participation by many controlled by none. So we set up a commission which includes representatives from each appellate district, from the Illinois Supreme Court, the Illinois Public Defender Association, Governor, etc. And then that bill was passed.

INT: So this is now up to 1973. When did you go to NLADA?
MH: Well, we started the project I jumped over in three years but we started the Illinois Defender Project about 1970. And I stayed in Cook County Public Defender as co-project director and we set up the project. So about that time Junius Allison approached me and invited me to become the director of NLADA. Actually Pat Hughes called me and said he was leaving and Allison then called me and he interviewed me for lunch and he hired me on the spot as director.

INT: What year was that?

MH: 1970. And the fall of 1970 and I told him this, that I wanted a different title than director of defender division. I wanted the title National Director of Defender Services. And I was willing to accept less money if I had that title. He said why is the title so important to you. I said because I have a concept, I have a vision of what we’re going to do and I want that title of national director. He said fine I don’t care.

INT: What was your vision?

MH: That we were a national movement. In fact had I not joined NLADA I was ready to set up a national defender association about that time. Once Junius invited me and said why should I set up a new organization here is one in existence and I’ll go with it.

INT: What did you know about NLADA before you walked in?
MH: Not much.

INT: When you got there what was it structured like and who was . . .

MH: Well I arrived there and I had had a big office in Cook County because I was administrator of the downtown office, I had a huge office which once belonged to the county board president. When I arrived at NLADA they gave me this little dinky office and Junius announced to me that my budget as $5,000. I had a secretary, I could use a phone, I could travel and everything else I had to generate which was kind of a shock to me because I was used to supervising a whole staff in Cook County. But what I did was I didn’t let it bother me. The first day since I had nothing in my office I stole a typewriter from one office, a map from another office, I think some paper from a third office, supplies from all over and by the end of day I was fully equipped. Junius came to see me he said I’ve been getting complaints from other people here in the American Bar Center that things are missing from their office. Mind you when I say stolen I didn’t really steal anything. I negotiated it. You know I could see a map and say you don’t want that map do you oh we don’t care, good, take it. He said I see you’re going to do okay here because you’re going to requisition things.

INT: How long had Junius been there?
MH: A long time. Maybe 12 years for all I know. He had been the director of the Chicago Legal Aid Bureau and then since Legal Aid, it had been the National Legal Aid Association until about 196 something and they added and Defender Association I don’t know the exact year but it really coincided with the Ford grant and I’ll get to that in a second.

INT: So what was the direct structure. . . .

MH: Well at that point, when I arrived Junius Allison was the executive director, they had a civil director named Mayo Stigler and then they had a person whose name was John Schullenberger there, nice fellow, I said what do you do. He said I’m the remnants of the national defender project NDP, I said what’s that. Now the National Defender Project had been a Ford grant of $6 million to NLADA given in the year 1964 after Gideon. And with that money NLADA had hired General Decker to be the project director. Decker has hired a little known lawyer named John Cleary to be his deputy. And they proceeded to funds 78 projects around the country, some federal some state, some assigned counsel, some staff defender to try to test how the heck to implement a Supreme Court decision in the real world, i.e., the decision comes down from the U.S. Supreme Court called Gideon v. Wainwright as you know in 1963 and the decision says there shall be lawyers for people accused of felonies in this country.
But there was no delivery system in place to do this. The only system they had up till then I would characterize as the Shanghai system, that is to say, in major murder cases or death penalty cases the court would appoint a lawyer to represent the person on Death Row. This is pursuant to Powell v. Alabama in 1932. At the time of Powell v. Alabama, when the U.S. Supreme Court ruled for the first time that a poor person could get a lawyer in this country in a criminal case, there were some 200 people on Death Row. So appointing a lawyer for all the people on Death Row meant nothing in terms of delivery. In fact people who got the appointment were overjoyed. My God I’m going to save somebody’s life. And they worked long hours often without any pay or minimal pay to do this death penalty case. But if you’re talking 200 or 300 cases at a time it isn’t much. And a lawyer once in his lifetime would get that kind of appointment. Now you move to Gideon and at that time there were 500,000 felonies committed in the country every year. And as we learned later from our national public defender survey which we conducted when I first got to NLADA, some 65 percent of felons needed counsel. So you’re talking about a client base of 350,000 people with no delivery system in sight. Sure there were a few offices, one in Chicago, they would expedite guilty pleas, when it was formed in 1930 that was the purpose of the Chicago Public Defender office to expedite guilty
pleas. We had some volunteer agencies in New York where we have
documents showing that merchants in some of these very programs would
say just give these defendants a technical defense and let’s not go overboard
here and in the book by Barak, defense counsel, he cites some of these
documents and we picked them up in an article by Nancy Goldberg and
myself called The Public Defender in America which was published in Sage
Press, book called Defense Counsel by McDonald. But there are the early
documents saying give a guy a technical defense you know don’t work too
hard. In Los Angeles they had a public defender office since 1914. And
Philadelphia had stuff but in only three percent of the counties where there
public defender offices. Now the Ford Foundation grant given to NLADA
was to develop programs all through the country to try to implement those
words in the Gideon decision. It’s an attempt to institutionalize a Supreme
Court command. It’s a very interesting exercise how a Supreme Court
decision now causes institutions to grow up.

INT: How many offices still run, do you have a sense of the 78
projects of the Ford grant, are they

MH: I think I don’t know exactly but I think the majority of them are
because after Gideon by 1970, this is ‘63 when I arrived at NLADA in 1970
that project was over. The money was pretty much spent and Schullenberger
was there to write the report. But I asked him questions about what was out there in the country and nobody seemed to know. So just as you asked me this question now I said well how can I be the national director when I don’t even know what’s there. So I called up LEAA over the phone cold and I had Ann Stephens who is now deceased but who was working at NLADA at that time, in my office and she couldn’t believe it. She said who are you calling there. I said I don’t know. We’ll get somebody. And she watched me over the phone negotiate a grant. I called up the LEAA in Washington and I said look I want to do a survey of the public defender offices and see what the heck is out there. I said I’ve just got this job and I don’t know anything. I know something about Illinois law but that’s all, I don’t know what’s in Pennsylvania or Arizona or Nebraska and you know the NDP people knew something because John Cleary knew something, Schullenberger knew something and Decker knew something but it wasn’t really written down. So in those early days I used to ask Schullenberger everything every day all day long I asked him questions. But there was nothing in paper that we could get. So I called LEAA and I said to them I want to do a survey of the country. They said well how much do you think you need. I said oh $100,000. They said oh okay and over the phone with Arnie Scholer who now I think works for National Center for State Courts, who was then
working there, I negotiated the grant. And we got the money, we hired a lawyer named Larry Benner who is now a law professor at Cal Western Law School, and a woman whose name was Beth Lynch now Beth Lynch Murphy and they worked on this first grant as directors to do it. And we sent out a survey document also Mary Ellen Dienes worked on that grant as the first director and then she left. So she started things off. She’s now a lawyer in Chicago practice. But we started it off, sent out survey instruments all over the country asking people how many investigators they had, how many cases they thought they could handle, what their budgets were, who existed. We sent the letters not to the defender offices because we didn’t know where the defender offices were but we sent them to every jurisdiction to the chief judge, to the clerk, to the prosecutor, to the state’s attorney, to the sheriff, you know we would send it, Sheriff, X County, County Courthouse [END OF SIDE ONE OF TAPE] . . . . And that report then after the statistics were compiled that became the report called The Other Face of Justice or the National Defender Survey. And when now Benner and Lynch did this work, just a cute little vignette I think, they weren’t satisfied with the work but I said to them some day this will be a minor classic you’ll see. And at some point I said you’re done. We’re going to print it. They said Marshall we’re not ready. I said no it’s done it’s great and we printed it and really was on
every bookshelf at LEAA and every office all over the country. Now we’re in LEAA. Now LEAA was very important to the development of the defender system. I said to you that the title of national director was very important and I’ll tell you why right now. I began to do a lot of traveling. I went out to the west coast and I met some people in the California public defender program. I attended their convention. I said well what’s happening out here. They said we’ll seceding from NLADA. I said what I said I just got here, what do you mean you’re seceding. We’re leaving, they said NLADA has nothing to do with us it doesn’t do anything for defenders it’s a legal aid organization. And they had a lot of money from Ford that’s fine that’s money over now you know. I said wait a minute. They hired me. Yeah they said we can’t believe NLADA did that. I said I perceive a new change of direction here. If they hired a person like me they’re serious about defenders. Oh give me a break and let’s see if we can work this out together. And this secession involved not only California but all the western states that were going to leave NLADA. So my vision was this. That there should be a state association in every state, that those state associations should affiliate with NLADA. I would go to the meeting. Also I didn’t do a lot of drinking, I mean I would be at the bar with them, I would drink six or seven Cokes but I thought I should get some law while I was there. I had
come to NLADA’s attention in the first place by talking about the Supreme Court. I would then offer to be on the program once I was there and then they would be happy to take me you know on the program for free and I would give an hour lecture on the Supreme Court or talk about one or two cases that had just come down or something so there is some substance to my being at the convention. And then they would introduce me and they would say Marshall Hartman, national director of the defender services. And people would say national director of what, what do you mean national director. I said this is a movement, this is one movement and we’re all together as defenders and I work for you. I’m the national director of your association and you are my bosses and we are working together. And there are defenders in Florida, in New York and in Pennsylvania and in Illinois and we’re all going to work together as part of a national movement. And everywhere I went they would say national director of what, same question always and that was the entre for me to then give a speech about the fact that we were doing one movement. And so that title was very important to me.

Now let me get back to LEAA. Here’s this organization called LEAA and they don’t give very much money to defenders, in fact in the LEAA act there is no provisions for defenders and so very little money is coming to defenders. One of the reasons Junius hired me he later told me was because I
had gotten the $2.5 million grant in Illinois he thought I could do something nationally for everybody else. So what occurred was that complaints began to develop about LEAA as to how they were spending their money, they were using money for armored vehicles in the south, for vigilante groups and so the Monagan Commission in Congress was set up to monitor what LEAA was doing. And they suggested that LEAA was going in a million different directions. Money was being given out for all kinds of reasons and there was no centralized plan, no goals toward which LEAA was heading. So they decided to have a national commission, they called it the National Advisory Commission on Criminal Justice Standards and Goals and this was very important for defenders. Why. Because they asked various important people in the country to serve as reporters and as counselors and as consultants to this national advisory commission. Sheldon Portman in California was a very important person, that is he was well respected by everybody as a scholar, as a leader and the National Advisory Commission asked him to be a consultant on defender functions and things. He said no I can’t do but I suggest you call Marshall Hartman of NLADA. They did and they asked me to be a consultant. They would pay me a $1,000 or something. I said no I won’t do I’ll do something different for you. I don’t want a $1,000. I would like you to have NLADA be the consultant and I
will do it as national director of defenders for NLADA. They said look we don’t care what you do, you know we’ll send the check to NLADA and you can do what you want. I said that way you can have the whole organization be involved in this instead of just me. Who the heck am I. I said number two I can’t really do, they wanted me to do like defender how defenders would function in a courtroom. I said I don’t know anything about that. I said it’s really too hard a topic you know about the prosecution and defense functions of ABA I said it’s really too hard to do and I don’t know anything about it. I said I’ll tell you what we know something about defender systems. So we’ll write a chapter on how you should organize defender offices, how does that sound. They said ah whatever, okay fine just do it. Now I looked for our resources and I was still in Chicago remember, Shelvin Singer is a law professor at . . . Kent and a former public defender and a brilliant person. I called him in and I say this. I need some help on a project. We’re going to draft some standards for organization of defender offices. Meanwhile LEAA says to me you have two days to get your document in your outline. So in two days I draft the outline of the standards. But now I see that it needs more brain power than I have alone and so now they give us 30 days to draft a complete outline which I did and I consulted with Nancy Goldberg who was then deputy and some other people but I essentially did
the outline. Then they give 30 days to produce black letter standards and commentary. At that point I needed a brain and so I called in Shelvin Singer and he did it. He drafted all, he took my outline and modified it a little bit. Nancy Goldberg gave him some older standards of ABA and NLADA which really were for motherhood and against sin, I mean they are very general, although they did talk about not having politics involved so that was good. And he drafted them, black letter standards and commentary. We submitted it and I went over but it was his work. We submitted it and we were told by the staff at the National Advisory Commission that this was one of the best products turned in by any consultant.

Now then the way this National Advisory Commission worked was they had a task force on courts in which one defender was involved, Stanley VanNess in New Jersey. They also had a commission headed by Governor Russell Peterson of Delaware, the former governor, no defenders on that commission. And on the task force were people like Arlen Specter who was then a district attorney in Philadelphia, now U.S. Senator, and some sheriffs and some other people. We were then told our product had been totally rejected by the court task force, that even though the staff said it was such a great work that the court task force had rejected all of our standards. So I called them up and I said I want to argue them. They said what do you mean
argue them, nobody has argued before the task forces. I said I don’t care about anybody else. I’m a lawyer. We submitted it we believe in it, I don’t know where they get off rejecting it, we want to argue it. Can we have an opportunity to argue these standards which you claim were a good product. So they got permission for us to argue. So Singer and I flew to the meeting of the court’s task force and on the agenda are all the standards that we wrote into the National Advisory Commission. And I argued them. There were 13 standards including standards on caseload limitations, on independence of defenders, on equal pay for all deputies equivalent to prosecutors and all kinds of standards like that. Early entry, use of experts, use of social workers even. And I argued them and I argued the first 12 and after every argument they adopted what we said. And then the 13th came which had to do with a board or something and I said to Singer we’re going to lose on this one. He said Marshall you won every other one. I said well it’s human nature, there is no way they can let you win every one it doesn’t look right, so we’re going to lose this one, just can’t be helped, don’t worry about it. We did we lost that one. It had to do with whether there should be a board and what the board should do.

But among that batch there was one thing that occurred. There was some caseload standards and the task force was going to vote on what the
caseload standards ought to be for us. I said to the task force people
gentlemen you’ve approved the concept why are you now voting on the
numbers. I’ll tell you what the numbers ought to be. They said well how can
you do that. I said well I met with the defender committee of NLADA just
a month ago and reviewed with them what the numbers of the caseload
ought to be and they are nine people from all over the country and they all
had some experience in the field and what I will present to you is not my
figures but what the defender committee of NLADA has approved. And
then we wrote in at that point I dictated to the task force the numbers of 150
felonies per lawyer per year as a maximum, 400 misdemeanors, 200
juvenile, 25 appeal. And that’s how those went right in. I just dictated it right
to the task force, they wrote it down. I think chutzpah is the word that
comes to mind gall

INT: . . . off the top of your head at that point did you

MH: No, I had really, I told the truth, I had brought that to the
defender committee a month or two before the defender committee meeting,
however, I had made them up in the first place based upon some earlier
things that I read. For example, there had been some conference at Earlie
House where they had talked about 150 felonies no empirical data for it and
1,000 misdemeanors. I thought that was ridiculous, 1,000 misdemeanors
and I thought 400 was high, plus we had figures from the national defenders survey that came in and that survey talked about what people did in the country and actually what people it was pretty close, what people were doing was about 142 felonies per year per lawyer and somewhere between 300-500 misdemeanors if I remember exactly. They said there ought to be is 100 felonies per year per lawyer and 300 misdemeanors per lawyer but I used the higher figures figuring I could justify Earlie House and I couldn’t sell anything better. And on 25 appeals I made that up based on my experience in Cook County as head of the appeals division. Nobody could do two appeals per month in Cook County, not a single lawyer, except Ted Gottfried who is now state appellate defender. But there is goal we could work for. Some other people talked about 90 appeals per lawyer per year people who had never done it.

   INT: Who was on the defender committee at that time?

   MH: Jim Dougherty from Cook County, Rollie Rogers from Denver, Colorado, a very fine defense lawyer, Terry McCarthy who is a federal defender may have been on at that time, people

   INT: What year?

   MH: Ah ‘72. Because the advisory commission conference was in ‘73. In any event they all approved it and so I had some basis
INT: Was Lou Frost at that point?

MH: Yeah probably Lou Frost may have been around or Buzzy Green

INT: [inaudible]

MH: Yes Myzell (Sowell –ed.) . . . from Detroit, Lou Frost and Buzzy Green were outstanding people from Florida. Actually Florida provided a lot of leadership in NLADA in those days. When I was first hired the chairman was from Florida, Bob Jaeger, and he was a very fine leader and then Buzzy Green was chairman and he was good and then Lou Frost.

INT: At that point the Florida public defender system was electing public defenders it’s an unusual concept. Did you know anything about where that concept where it first started, the elected defender, where it first came from?

MH: I know today Nashville does it, San Francisco

INT: All of Tennessee does it

MH: Florida still does it.

INT: Nebraska . . .

MH: I don’t know where it started. I do know though that they had outstanding leadership though out of Florida and I can talk about that a little with respect to NLADA as to some things Bob Jaeger and I did together and Buzzy Green and Frost.
INT: What was the board of directors like at that time on NLADA, how big was it, where did it come from and who ran NLADA?

MH: Well go back a little to that. I want to complete something about the standards though first then I’ll go back, is that okay.

INT: Sure.

MH: When the task force passed these standards there then was a big conference attended by 1,500 people sponsored by the National Advisory Commission on Criminal Justice Standards and Goals and our standards were then promulgated in a book. They issued five-volume report. One volume was called courts, we were chapter 13 in courts. And other people who drafted standards then were corrections, police, courts, prosecutors, community service organizations, etc. and so our standards now were very official in the sense that the government, even though the government didn’t sponsor this nevertheless the standards and goals was a major initiative of the law enforcement administration.

INT: Is that the one where Burger made his statement . . .

MH: No, he made it before . . . I think so, right. But let me stay with these standards and goals now. Argersinger had come down about this time, ‘72, these standards and goals are passed and now amendments are up for the Law Enforcement Assistance Administration bill. I testified before the
U.S. Congress before Congressman Rodino’s subcommittee and I also arranged for John Irving who used to be . . . director to testify under NLADA auspices. And when I testified I had reviewed the history of what has occurred in ‘68. In 1968 when they passed the Omnibus Crime Control and Safe Streets Act Brandon Clark, Jr. testified before Senator McClellan and said how come defenders aren’t in here. McClellan said we don’t want any defenders in here. This money is not for defenders very clearly. Against that backdrop I now testify in ‘73. I had the following ammunition now, the Argersinger decision, the standards and goals stuff coming out of LEAA and a report that NLADA sponsors done by Beth Lynch who I talked about before who did the Other Face of Justice with Benner and who I stole from Law Enforcement Commission, that’s where I stole her, she had worked for LEAA. And she teamed up with Nancy Goldberg who was then deputy director of NLADA and they wrote a book called Dollars and Sense of Justice and in this little book, a report, they traced three years of funding by LEAA from 1970 to ‘73 showing that defenders had received less than one percent of the money. And I introduced that book into the Congressional Record and I argued that now defenders had to be written into the bill. Very reminiscent of what is occurring today as we speak as we sit here. And Representative Railsbach of Illinois said to me Mr. Hartman doesn’t
anybody know that defenders are part of the criminal justice system. And I said Congressman, I said, I’ve appeared before many local LEAA boards and they said this. If Congress had intended defenders to get the money they would have written you into the bill. And you’ve got to write us into the bill. And that very same day the prosecutors testified. Pat Healy who was then head of the prosecutors association and a friend of mine, testified asking that prosecutors be included in the bill because they weren’t getting much money either. It was all going to the police pretty much, courts were getting, in our study we showed courts were getting six percent, prosecutors about 1.9 percent and we were under one percent. Police were getting 50 percent. So he testified the same day which was helpful. And then the staff of Rodino’s subcommittee both Democrats and Republicans came to see me and he said do we really have to put in defenders in here and I said yes, not because of my testimony but because of Argersinger you’ve got to do it. There is no way to handle the Argersinger problem just as a major emergency occurred after Gideon and Ford Foundation pumped $6 million into setting up these 78 programs, now the federal government has to come in after Argersinger and pump money in to set up these programs. Now what occurred was that after they amended the act in ‘73 amendments to the LEAA Act they wrote in the words defender and prosecutor are eligible to
receive monies. The important thing that then occurred was we dealt with the staff at LEAA, when I say we Nancy Goldberg and myself, with the NLADA staff but we did a lot of dealing with the LEAA staff. We went to their seminars, we helped train their court specialists, we went to every seminar they ever put on, and either because we convinced them or they themselves saw the need, I don’t know which, the LEAA administrators sent out a document, a memo to all the states stating that no defender program should be funded unless they conform to the new standards of the National Advisory Commission, standards that we had drafted. Now people were totally unaware of this because there was a secret internal memo in LEAA and there was no requirement by the Congress that this be done but they were very conscious of standards, there was a big initiative for LEAA and once we were in the book and once we had gotten the authorization to fund defender programs, they said to all their court specialists they had a court specialist in every city who helped distribute funds to court programs, not to give money to any programs unless they met the new standards of the National Advisory Commission, early entry, case limitations, use of experts, you know, ah and political independence, etc. So that was a very important step in dealing with LEAA.
You asked me a question about NLADA itself and I can go to that now if you want and we can come back to LEAA later. When I became the director of NLADA in 1970 I found a situation in which the defenders were kind of new stepchild on the block. There had not General Decker had been a very forceful person during the National Defender Project and he opened a lot of doors. He had been in the Army he had been head of the JAG Corps, Judge Advocate Corps I guess. He had a lot of contacts all over the country and he would go into states and talk with judges and begin to start to set up defender programs. And John Cleary who was his deputy was indefatigable, he was a super man and he was very dedicated to this work. But somehow they were never comfortable within NLADA, I’m just telling you this, they felt somewhat alienated from NLADA and there were some turf questions between Junius Allison the executive director of NLADA and this National Defender Project grant and thought it should be independent. When I arrived I didn’t have that problem. Allison had hired me, I liked Junius Allison, I respected him and I was willing to work within the framework of NLADA to accomplish the same goals that Cleary and Decker wanted. Plus I had come out of a defender office. The others had really not been defenders and even Pat Healy who was my predecessor had been a prosecutor, and Mike Getty had been an investigator in the Public
Defender’s Office and a prosecutor. I was the first defender to ever take that job as I defined it. So for example I would go to meetings and Decker would say the only good public defender is a former prosecutor and he would see me in the room and say wait a minute, Marshall Hartman disagrees with that, he says you can be a good defender all your life. I said I sure do. So I mean it was a new ethos. Now NLADA had a large board of directors and the defenders had one or two people on the board.

INT: How big was the board?

MH: I think they had 72 people on the board at that time and defenders I think had two six seats in all but like two seats per every 24 or something. They were staggered but it just a couple of seats

INT: Do you mean defenders or do you mean defense lawyers?

MH: The defenders, yeah defense lawyers I guess. Now there was a civil committee and a defender committee and, somewhere probably nine people in each

INT: How big was the executive committee?

MH: 21. And again there were one or two defenders on the executive committee period. Now I remember having a smoke-filled room, well the first convention I went to was San Antonio and I had been hired in September
INT: Which was that ‘69

MH: No 1970, I was hired October 1st, September 15th actually, I always count October 1st but and the convention was a month later, so and I put together that convention single handedly. I had no staff, I didn’t know anybody yet but when I say single handedly it’s unfair. I had the ideas but I talked to people like Terry McCarthy and I had cooperation from everybody in the country. And what I did was do a lot of management stuff in that seminar. For example we had the person who was in charge of New York Legal Aid Society debating Dick Buckley who was then the Los Angeles Public Defender on how you set up offices. And I had Terry McCarthy on some programs, Ted Gottfried on some programs, a lot of very good people but very heavily management oriented instead of what had been before which was I think either they had no defender programs before or they were just kind of staff oriented. And I felt that the managers were the ones who came to this convention, in facts heads of offices came. And actually I had never heard of NLADA before until there were some convention in Puerto Rico and I saw Jerry Getty pack his bags going out the door about 1969 and I said where are you going and he said I’m going to San Juan, Puerto Rico for the NLADA convention. I said gee that sounds like fun can’t I go. He said no just the heads of offices. And so I felt it was very important that we
involve, I always believed after that it was very important to involve everybody in NLADA and not just the head of offices. But . . . I geared the convention for them. Now I remember a smoke-filled room around that time, Bob Jaeger is chairman of the defender committee and we’re meeting with Gary Bellow who is then on the civil committee and now a Harvard professor and other people who were involved in the formation of OEO Legal Services. And it’s a time of great ferment, Pat Maxwell was on the staff of NLADA and he’s drafting the Legal Services Corporation Act at the time that I was there. John Joyce who was heading up technical assistance for legal services and it was a time of great development. But in this smoke-filled room a discussion between the civil and defender committee was the defender’s request for equality in the organization which I help spark a little bit too. And I remember Gary Bellows saying you want equality well like what, like number of clients served, number of programs and I remember it was my first day there, I had just come on board and I spoke up and I said no like let’s say there’s 12 people you get six and we get six. And Gary Bellows laughed and then the agreement was that defenders and civil people would have equal representation on the board and on the executive committee. That was the beginning of what I had promised the California
defenders that we would begin to have our fair share of resources in the
organization and

INT: In which city did that smoke-filled room occur do you
remember, I thought it was New York.

MH: It may have been a meeting, I don’t think it was the San Antonio
meeting but it was shortly thereafter

INT: I have a feeling it was New York

MH: It may have been. But Jaeger was very instrumental because he
backed me up and I mean I suggested but I was a little staff person but
Jaeger was chairman of the committee and

INT: Well who generally became president of NLADA at that point?

MH: Probably bar people always became presidents.

INT: How were they picked?

MH: Probably a smoke-filled room, I have no idea. I mean there was
they would decide, they would be representatives of the private bar and they
would trade off. Ultimately there were people whoever were interested in
legal services and in public defender and especially legal services and many
of them were very distinguished and they went on to be president of ABA
after being president of NLADA and I was even told
INT: One other question, as I remember it wasn’t unusual at all that the people on the board were not on the defender or the civil committee.

MH: Oh absolutely they were separate.

INT: Frequently one committee would take action and then the board would never hear about it.

MH: Yeah, the defender committee would deal with purely defender matters and they would take certain positions. And then different people were on the board of directors, different public defenders and often they took different positions and there was some tension between the two groups which led to a reform later which tried to set up a situation where the same people were on the defender committee and on the board. But in any event that smoke-filled room was very important because that’s where we established the principle of equality between defenders and civil people.

INT: [inaudible]

MH: Oh I think so. I think people like Howard Eisenberg helped because he became the first executive director that had been a defender, I think Ben Lerner who became the president, I think Jim Neuhard who is interviewing me and became president and all those people showed extraordinary leadership and convinced the civil side that there was a new defender ethos. See let’s understand what the problem is. I’ve omitted a
very important person in this discussion. That person is Frank Jones. About the time that Junius Allison hired me on the defender side he was replaced a few months later by Frank M. Jones, who became the executive director. Now to my mind Junius Allison represented the old legal aid bureaus and the legal aid bureaus were the bastion and the backbone of NLADA. But now you see two developments occurred almost simultaneously. One was the development of Legal Services Corporation and OEO and all that beginning in ‘64 and also Gideon and now you had a new ethos among civil lawyers and also among defenders. And the new ethos was one on the defender side that we were constitutional lawyers and legal service side that they were working they had federal money and nobody was beholding to the local merchants, now I don’t want to condemn local merchants, they were very nice but for example let me try to talk to you how it is on the defender side. When I was in Cook County prior to Gideon and we took over the Cook County Public Defender took over the misdemeanor courts in Chicago those people were called court aides. They really were very political. They had private practices, they were political appointments. They never interviewed clients, they never researched, they were only in court. And they really were there to expedite guilty pleas and they asserted the sufferance of the judges who set up these offices to expedite guilty pleas, there is some good
literature to show that. In 1963 and ‘64 after Gideon I viewed myself and people like Ted Gottfried and others around the country viewed themselves as constitutional lawyers. We’re no longer working for the judges, we’re working for clients. We’re not there by charity that somebody has contributed money so we can be there, as the old voluntary associations, we’re not there at the convenience or the sufferance of the judges to expedite guilty pleas, we’re there by constitutional mandate to defend clients and represent clients and so I used to try to tell Frank Jones that there is a new breed of lawyers very aggressive from the Legal Services Corporation and OEO legal services, that was on the civil side and not coming out of the old legal aid bureaus. So too on the defender side there was a new defender, as I called him, who was had no visions of working for anybody other than clients. And so it as very important in a sense, Frank Jones and I agreed on a lot of things and he was very supportive of defender operations, and so he was a very strong force in helping the association’s resources mobilize for defenders as well as civil and he felt and he helped train me a lot in terms of the thought that poor people have both civil and defender problems and we have to work with them.

INT: What was the image of the public defender then, let’s break it into several parts, the general image in the public at large, the image among
the private bar and the image in the civil community. When I say civil I mean the legal services . . .

MH: Well I once observed a discussion between Frank Jones and Gary Bellow, now Gary Bellow was one of the outstanding civil lawyers in my view and one of the leaders of the civil side and he had been involved with Frank Jones I think in either drafting the OEO Legal Services bill or in the early days of legal services and Gary Bellows said to Frank, this guy Marshall has converted you into becoming a public defender these days. He said all you’re going to do by spreading these public defenders around is create mediocre offices everywhere because these public defenders are mediocre lawyers. And Frank Jones defended the defenders, he said you know you’re wrong Gary because see here are these constitutional rights but unless there are lawyers out there even if they are mediocre there would be nobody to enforce these legal rights on the criminal side and so we’ve got to spread these offices around. And a very interesting vignette to show the view from the civil side they felt that public defenders were politicians, that they were political hacks, the general public’s view was that all public defenders are overworked and underpaid with huge caseloads. They would plead you guilty in a minute and in general although

INT: . . .private bar
MH: I would say they based on some of the people I met through the ABA many private bar lawyers felt that a public defender was somebody who couldn’t make as a private lawyer and I know that I had no such inferiority complex and when we served on a committee to set up the National College of Criminal Defense I remember trying to explain to these private lawyers that I thought a private lawyer was anybody who hung up a shingle, whereas a person like Shelvin Singer who had set up a whole statewide system of defenders or Ted Gottfried or people in other states including Jim Neuhard, that these were giants in the field of law but that no private lawyer who just does his own cases could compare to them. To my chagrin and surprise their view was that if a lawyer didn’t make a lot of money like a million dollars he was nothing, so there was a mutual misunderstanding as to the importance of defenders but I would say a defender’s image generally was not good. Plus the private criminal bar’s image was not any good. In the president’s commission and report I think in 1967 Challenge of Crime in a Free Society, to talk about private lawyers in the criminal side as if they were mouthpieces of the syndicate almost or people who lounge in the halls of the court getting quick appointments and handling people without investigation and research. I think however that we’ve succeeded in past 20 years in changing that image of the public
defender and I think now a lot of people recognize that public defenders are very fine lawyers, get a lot of experience, research and handle cases.

INT: So with your background at NLADA what were your duties, projects what were you doing at that point from say you went there in 1969-70

MH: No, October 1, 1970. Well I told you that Junius Allison gave me this news when I arrived that I had $5,000 for travel and phone and anything else I had to and he also gave me a secretary but everything else I had to build and he also gave me $15,000 for a staff lawyer at the time. And what I did

INT: Let me stop you right there for a second. $15,000 for a staff lawyer, what was say the average salary for a defender at Cook County at that point.

MH: Well I was making about $21,000 in Cook County

INT: You were a supervisor

MH: Yeah, I think that was about right yeah probably so. So I hired a young lady Mary Ellen Dienes and then after she was with me for a while I divided that money and moved her to director of research at NLADA and I hired two people who were very important. One was Nancy Albert Goldberg who was a University of Chicago graduate and the other was Beth Lynch
whom I’ve referred to before who worked for LEAA. And I won’t tell you their salaries because they would never talk to me again but between the two of them I paid $15,000 and Junius Allison who left approved my doing that I said I can get two for one and I did that because they are both dedicated and they are both brilliant and they are both made long standing contributions to NLADA. But that gave me some power. The power was Nancy Goldberg was absolutely a genius. Her father had been rated as one of the 50 greatest mathematicians in the world and she had went through the University of Chicago Law School after she already had a family and Beth Lynch was a non-lawyer but had a masters in criminal justice from the University of Illinois and ranked number one in her class. And what was most important to me was that she knew LEAA inside and out and so I teamed the two of them up to write several works on the Dollars and Sense of Justice which included a history of the structure of LEAA and its funding patterns, Beth Lynn then worked with Larry Benner on that report Other Face of Justice, the National Defender Survey and then I began to spin off grants and utilizing these people as project directors for the grants and Nancy Goldberg was an excellent draftsperson and in her career she drafted about $5 million dollars worth of grants. Now what we did was this. We tried to analyze what was needed for defenders and we developed kind of a plan and the components
of the plan were not something which I developed alone or even kind of . . . . but they are based on experience as to what was needed. For example, early on in my career at NLADA soon after Junius left and Frank Jones arrived, which was a few months, Frank Jones assigned me to an evaluation of the Massachusetts defender agency, a statewide evaluation which had come in. And I had never done an evaluation before. This was statewide and so I read a lot of designs which had been done by Urban Institute, designs which were done for the civil side of legal services and other documents and also I asked John Schullenberger how they monitored the 78 projects of the Ford Foundation and he explained to me orally the kinds of things that they did but was not written down anywhere. And so for the Massachusetts evaluation and at Frank Jones’ urging we developed a written design for how one would evaluate this defender office. And I assembled a team of other public defenders around the country to go into Massachusetts and do this project. I think we had $20,000 to do it which was an enormous amount of money in those days. People I gathered for the team included Stanley VanNess who was the chief public defender in New Jersey and had been on the court’s task force, was later on the court’s task force of the National Advisory Commission, Barbara Babcock who was then teaching at Stanford but had been the public defender of Washington, D.C., R.A. Buzzy Green
who was chairman of the defender committee and came out of Florida, Clearwater, Florida and altogether about 10 other people, including Pat Hughes of Chicago who I made the project director. Now after this evaluation was over it was apparent that we needed to have an evaluation design because as a result of this evaluation and the next four that I conducted the chief public defenders were fired in four of five evaluations. And I saw with tremendous wrenching tremendous publicity for example the Massachusetts experience was written up in The New Yorker in two issues of The New Yorker, not that they mentioned NLADA mind you, they just said several defenders had come in and evaluated the office. But I could see tremendous implications for people’s careers, for their lives and here I was responsible in a sense of firing four out of five top defenders in the first year I was there including the former chairman of the defender committee who had hired me in a sense, I mean actually Junius Allison had hired me there was always some kind of dual role between the defender committee and the executive director and he ran me by the defender committee. A little vignette when I appeared before the Senate committee the chairman who was from Massachusetts, Ed Rimbold was his name said to me well Marshall congratulations the Senate committee welcomes you, we know you are a defender, we know you’ve been in the field, we’re happy NLADA hired you
he said, let’s go out and have a drink. I said I don’t drink. He said here have a cigar. I said I don’t smoke. He said oh oh, I bet you keep a clean desk too. I said yeah I do. He said my pappy told me never trust a man who doesn’t drink, doesn’t smoke and keeps a clean desk. And those prophetic words are correct because in the first evaluation of Massachusetts as a result of the evaluation I set up although I wasn’t on the team, he was then removed as chief defender of Massachusetts. Now what I’m saying to you I could see we needed some kind of standardized design for evaluations so that the poor defender who we evaluated was not at the mercy of individual evaluators because some people are tougher, some are more lenient. We needed to have that. We needed to have some standards by which to judge how a defender office should be operated. We needed some kind of agency that would improve offices, I mean for example Ted Gottfried in Illinois became state appellate defender. When he became state appellate defender he asked for an evaluation by NLADA to help him manage his office better. There was no question of removing him from office, the question was what did he need and then who could do it. So you need some kind of technical assistance component in NLADA. And so we began and we needed some research on major questions because daily we received phone calls and letters from people asking questions like I’m in a jurisdiction of 600,000 how much
would it cost to set up a defender office. Or what should the proper caseload be in such and such, or what’s happening in Nebraska. Who knew all these things. We had no knowledge in the field. There was no scholarly stuff written in my view in the defender field at that time since Reginald Heber Smith in 1919. So I assembled a staff of very bright people, I got Larry Benner on board who was also a University of Chicago graduate Law School and is brilliant and with Nancy Goldberg and Beth Lynch I had the nucleus of a very strong team of scholars and plus Mary Ellen Dienes who was I said worked at research. And Ann Stevens I brought on board as a friend who had worked with us in Illinois and she became director of publications. So we had a pretty solid group on the defender side and throughout NLADA.

Now we began to file grants with LEAA in Washington, grants for NLADA. I was the chief negotiator, Nancy Goldberg was the chief and Beth Lynch were the chief draftspeople. And it took us a couple of years to do this, to file these grants and to get them funded. It wasn’t automatic. Often it would take somewhere between nine months and a year. Our method was very simple. First of all Nancy and I were available and Beth as well for every LEAA function that they wanted us. They had meetings of their court specialists by region. Nancy and I would fly to a meeting as did
Ed McConnell, director of the National Center for State Courts, as did Pat Healy, head of the National District Attorneys Association. We would all fly in and lecture to the court specialists about needs in our areas and Nancy and I talked about defender needs and defender organizations and what grants would be appropriate in the states and of course Ed McConnell would do it for the courts and Pat Healy for the prosecutors. One such session like that started we weren’t even invited to the first you know you think LEAA invited us, the first court specialists conference they had I had to call up LEAA and say look I hear you’re having one how come we’re not invited. They said well who are you. I said we’ll NLADA. Said you know so what. I said no, no we can contribute. We’ll come at our own expense, we’ll talk to your group and talk to them about defender problems, needs and so they let us go. I think I sent Nancy to that one and also I may have sent John Schullenberger or Larry Benner one other person. After that I always went myself and Nancy went and we got to know every court specialist in the country.

INT: Who were the key people at LEAA at this point?

MH: Jim Swain was a very important person. They had an adjudication team, staff. Arnie Scholer was the head of it, Jim Swain was there, Cheryl Martorana. Now these names are very important because Jim
Swain who was there in 1971-72 would stay there until recently he was head of the whole adjudications division and head of a whole division in Bureau of Justice Assistance which replaced LEAA. And he’s still there and we know him from the Nixon administration in ‘72 and at that time he wasn’t director of anything, he was a staff person and when he needed help we helped him. I remember some conference where we were at and he said Marshall would you stay another day I’ve got to lead a seminar for the judges and you are a good talker and you know just stick around and join me. I said sure. I stayed and at that conference I helped him with his seminar, did him a favor and of course I’m doing my job because I’m there, I’m going to talk about defender stuff. Who’s in the audience Howell Heflin who was then chief justice of Alabama, some chief justices of other states and now I’m on the program with Jim Swain. After the meeting Howell Heflin invited me to come down to Alabama to confer about defender matters and I did take that invitation. I flew down to Alabama and met with him. So the point is we worked with them and in those early days of LEAA they had to spend money every year. At the end of every fiscal year for about two or three years running Arnie Scholer who was the head of that division would come to Chicago, he take a hotel suite and meet with myself and Nancy Goldberg and Pat Healy who was then the head of NDAA which
is also located in Chicago and he would say this. Boys and girls or whatever I have some money left over, what do you got. And then Pat Healy would hand him five or ten projects, Nancy and I would hand him five or ten projects and he would say I like this one, no, this one is out, this one isn’t any good, how about this one the two of you can collaborate. Now an example of a project which was funded that way was student intern project. The first year the project was to provide 20 interns to be placed in public defender offices and 20 interns in states attorneys offices and the second year of the project it was 100 interns from law schools to be placed in public defender offices and states attorneys offices. And the government paid transportation and the government paid the salaries of the law students and because of that program we went around to a number of law schools in the country talking about careers in public defender offices and summer internships in public defender offices. And we went with the prosecutors to push the idea of internships in the prosecutor offices. And Beth Lynch I utilized as head of that project. And because of that a lot of people were exposed to internships in public defender offices that would never had that kind of experience before. Remember I told you when I was in law school I couldn’t do it. That was in the back of my mind. That was one of the projects we developed and Nancy and I came up with ideas and we got ideas
from Frank Jones and some other people on the staff too and from people in the field.

One of the things I used early on was what I view as the family of defenders. We were all friends. John Cleary was in California at this point. I called them back to work. He said I don’t know about NLADA and me I said what do you mean, I need you and people responded. To give you an idea of how they responded apart from filing grants which I’m going to get to in a second as to what they were, we tried to respond to problems in the field. To give you an example of what Cleary did for me and for the field. A lawyer a Macomb, Illinois wrote the following letter. Dear Mr. Hartman: I’m writing this letter because I need help down here. I’ve been appointed public defender. My secretary also works for the sheriff. They are angry with me because I won’t plead every case and the state’s attorney will go see clients without me and tell them to plead. And then when I see them and say don’t plead they want to hold me in contempt of court. There is no concept here of what a public defender should do. Please help me. Signed such and such. P.S. The only reason they haven’t fired me yet is I’m the son of a local judge here and so I have some political pull otherwise I would be long gone. Please help. Cleary was in San Diego at this point, at the federal defender office. I called him up and I said here is a job of a super man, John
Cleary, what I want you to do is fly out to Macomb, Illinois and meet with these people and tell them what a public defender ought to be doing. And I had gone out to his office by the way and given him a big write-up, a good write-up saying he was an excellent administrator. So he owed me one. So Cleary said when do you want me, I said tomorrow, you’ve got to here immediately they are going to fire the guy any day. He said how do I get there. I said it’s easy, there is a flight from San Diego at 3:00 a. m. in the morning, you take that flight to LA. And you fly from LA, you arrive here, you take a train to Macomb you’ll be there in another 16 hours don’t worry about it. He laughed but he did it. He took that red eye special, he still talks about it, he flew to Illinois, he got the train all day to Macomb and by the time he was done in Macomb they had an idea of what a public defender should be doing. He did a great job and then he wrote a report. Well I utilized him, I utilized Terry McCarthy, I utilized Gottfried, I utilized people from all over the country, other people I’ve not mentioned, Rollie Rogers, I utilized people from all over and so the defenders would go from one place to another trying to help out. Vince Zaccardo was then the public defender of Philadelphia, he went on evaluations for us, Shelly Portman went on evaluations and we were able to begin to help people in different offices. I must tell you further that there is another player in this game that I must
mention whose name is Joseph Trotter but I want to stress to you that nobody gave NLADA anything in those days. We fought for everything that we were going to get. We fought for a place in the sun. Trotter was at American University. He received an adjudication technical assistance grant from LEAA and I’ll tell you what occurred. He gets the grant this is about 1971 or ‘72, he gets this grant from LEAA and he calls me up. And he says Mr. Hartman yes, you’re working as national director or whatever, yes, he said can you give me the name of some defenders who will we want to use as consultants in doing some defender technical assistance projects. I said no. He said what. I said no I’m not going to do that. I’ll tell you what you do Mr. Trotter. You tell me any project you want and I’ll even refer projects to you and then you work out the budget and then I’ll give you the name of consultants that you need for this project. He said no I’m sorry I can’t work that way goodbye. I said all right. He said where do you get off thinking that you own all the public defenders in the country and it comes through you. He said no forget it goodbye. I said okay goodbye. Why did I do this. It was because I was very jealous of what would be done in public defender offices. I wanted a certain kind of standard you know things like non-judicial interference, things like lower caseloads, things like early entry, things like use of experts and support personnel. Things which I had learned
and no judicial control things which I had learned painfully in Cook County painfully. I keep talking about early entrance. I said that’s important because in Cook County under Illinois law to this day if a client calls up a public defender office and says I think I’m wanted by the police will you come with me to the police station and the answer is no. Under Illinois law a public defender can’t act until they are appointed by the court. I hate that provision. Okay. So I didn’t want some efficiency agency coming in like from a big 8 Price Waterhouse, etc. and then say what defenders ought to be doing which would be counter to what we were trying to promulgate nationally as a group. So I wanted to try to control these things. Four days later Trotter calls me at home. He says I have a project to go to New Mexico to help do a pilot program for statewide defender program in New Mexico or a statewide . . . council something out there. I need your help. Will you give it to me. I said absolutely. When do you want people out there. He said in four days. That’s why I’m calling you I’m giving in to your demands which are outrageous. I said four days no problem we’ll do it. That’s all I’ll set the whole thing up, you approve everything and we’ll guarantee the product. I said if people I send out there don’t do the job I’ll keep working on it until it’s right. Okay guaranteed product until you are satisfied. All right okay. And I don’t want money for us we’re just you
know setting it up for you free of charge. I gathered a team of Pat Hughes who had been my predecessor at NLADA, Buzzy Green from Florida who had been chairman of the defender committee and a little known lawyer named Addison Bowman who had been the public defender in Washington, D.C. and who had set up the best training program ever according to LEAA. He did the pilot for $80,000, training program, an outstanding trial lawyer. I sent them out to New Mexico. You really need to talk to Pat Hughes to get the flavor of this. I sent them to New Mexico and then I flew out there. They weren’t getting cooperation from everybody and as Pat Hughes tells it I flew out there to meet with them and took over the whole law school, took over everything, demanded everybody cooperate with us and then to work with them on the report. And then they produced the report the three of them and that report turned into the state defender agency of New Mexico. In fact for a while people used to introduce me as the godfather of New Mexico but really it was Pat Hughes and Addison Bowman and Buzzy Green who were the brains behind it. All I did was expedite it. The reason I tell the story is not only it shows how we help set up in New Mexico but it set up our relationship with Trotter so that ever afterwards he was grateful. The product was good in New Mexico. People like it and from that time on every TA project, technical assistance project in the country and he had money to fund
them he worked with NLADA, he worked with me or whoever I had work with him to set up the teams and to do technical assistance and begin to spread the kind of word that we wanted to set the kind of defender systems we wanted you know low caseload, client oriented, etc. That was a very important step in the process and to this day Trotter is still around with the technical assistance grants, the last one from LEAA he’s doing defender stuff and he still calls me too. Only now he’s a little more independent. But that was an example of some of the things that we did through NLADA in various states.

Another example we did was in Ohio where I sent Shelvin Singer one summer, I got him a job with the Ohio state planning agency of LEAA and he went there a whole summer and lived there, working for that agency in drafting a plan which became the outline for the state defender agency in Ohio. Now I don’t take credit for this, Singer did this, I mean he wrote the plan and that plan became the foundation of the state defender program in Ohio. And he had a lot of help from people in Ohio, a guy named John Tessler worked on it and other people. And I helped him but I expedited Singer getting that job and I actually placed him inside of LEAA of Ohio so that we could begin to do something in that state. Singer and Rollie Rogers went to Kentucky, he reviewed their program and helped develop some
standards and changed the whole defender program in Kentucky. So NLADA had a tremendous impact on these states and of course we couldn’t advertise it too much but we did were able to begin to build bridges and begin to plan programs in various states. O.P. Pollard, Overton Pollard in Virginia was another person that dealt with us. We gave him advice on how to do things in Virginia. He’s probably at this convention if he’s still around and he’s the director of the Virginia program. So that was very important and we were able through these other people like Trotter to exert a lot of influence on what was happening around the country. Nevertheless I felt we should have our own agency to do this. So I filed a grant for a national center for defense management. Now I must tell you a number of the ideas that I had I received from other defenders in the field, from Nancy Goldberg as I said Frank Jones, Singer and the Illinois group because we had done things in Illinois and we set up a state appellate defender program in Illinois against all odds. [END OF SECOND SIDE OF TAPE] . . .
JN: . . . grants that were obtained that were significant back in the 70s. Why don’t we pick up and start talking about the evaluation of Rochester, New York.

MH: Okay. Thank you. The period that I was at NLADA was 1970 to 1976 roughly October to October. A lot of the activities that we were asked to do during those years centered about three areas. One was evaluation of existing defender offices, the second was giving technical assistance to existing defender offices and setting up giving technical assistance to counties who wanted to set up new offices or states that wanted to set up new systems. And the third area was in research and setting of standards. So let me talk a little bit first about the evaluation part. Rochester is a very interesting evaluation because at this convention

JN: When did that occur?

MH: In the early 70s about ’72 or so, ’73. The reason it is important is that at this very convention I saw the public defender of Rochester, New York in the lobby just yesterday and he said to me oh you’re Marshall
Hartman, I have the report of the evaluation that was done in those early 70s and I want to thank you because without that evaluation I would not be here today. And it is very interesting as to what occurred because it was indicative of the changes that were occurring in the defender world at that time. And I say the defender world I think the defender is a microcosm of the changes occurring in the legal services community and in America itself.

Let me just talk to you specifically about Rochester itself right now. What occurred in Rochester was, there was an existing public defender office but we received a phone call from a legal service lawyer his name was Lavin, who had been contacted by some 55 community groups who were dissatisfied with the present service of the public defender in Rochester. And they wanted some way to change the system. The system was highly political, politicians controlled who was appointed public defender, appointments as assistant public defenders were very political and the public defender there at the time, although a very fine lawyer I think in court, was not really sensitive to the needs and demands and desires of the community groups. And that included all kinds of groups at all kinds of ages. And so they called NLADA, spoke to me, and I agreed that we would do an evaluation of the Rochester defender office at the request of these 55 or 50 community groups. And we do an evaluation. I sent in Sheldon Portman
who then public defender of Santa Clara County as the team captain and a three-person team and they evaluated the system. Among the recommendations at the end of their report was that the public defender be replaced but more than that they proposed systemic changes in the method of appointment of the public defender. They proposed that instead of political appointment by the council or the county legislature there, that instead there be some commission set up with participation by community groups on the commission. So that a merit appointment would take place not Democrat or Republican which cause changes every time the other party won, and a public defender who would be sensitive to the needs of the community. And today Mr. Nowak is the public defender and he says they are sensitive to the needs of the community. Those recommendations of the evaluation were carried out and the entire system in Rochester changed and I understand they won several awards since that time as one of the outstanding defender offices in the state of New York.

**JN:** Wasn’t there a law suit that reached the U.S. Supreme Court about political patronage that dealt with that very office that came out in the 70s, the idea I think it was that the employees were fired because they weren’t the right political party and I think there was a law suit around that.

**MH:** It may have been later after the evaluation.
JN: Yeah it was.

MH: But the evaluation was, we were the stimulus for change in a sense. That is to say the change agents the people requesting change were the community but we were then the spark that was able to make the change.

JN: [inaudible]

MH: And we made systemic suggestions.

JN: There are several other evaluations which were legendary in terms of their impact on the whole defender movement. One of the other ones that I heard about, I still hear about to this day, is an evaluation done in New Orleans.

MH: New Orleans was a very difficult evaluation from NLADA.

JN: What year was this?

MH: I would say again I just can’t give you the exact date but it was in the early 70s, it was again ‘72 in that era, ‘73. What occurred was it had tremendous impact on NLADA. See about this time LEAA was beginning to set up certain recommendations for grants, RFPs, requests for proposals and one of the areas they were looking at was the evaluation. There was a fear always that if a national association evaluated its own members that the association might not do a conscientious merit job because they would be afraid to offend their members. LEAA never worried about us on the
defender side because our evaluations were straight arrow always, I mean I never as a staff member I never went on the evaluations, we just set it up, there were always field lawyers and whatever they decided that’s where the chips fell. In New Orleans there was a request to do an evaluation in New Orleans, John Simmons was then the public defender of New Orleans, and a very active member of NLADA. And the team that went down there included Norm Lefstein, who was then public defender in Washington, D.C., I think he was public defender then, Paul Ligda who was prominent public defender in California, and Shelvin Singer who was then a law professor and former public defender in Cook County, and they were a very outstanding team. They were all very experienced evaluators and when they went down, first of all Nancy Goldberg who was my deputy and I went down to set up the evaluation. We met with John Simmons. He told us some of the complaints but when we met with people in the funding agency for New Orleans it appeared that some of the complaints were directed against John Simmons and not complaints about his office only. When the team went down they recommended that the system be changed in New Orleans and that John Simmons be fired. This was devastating for NLADA and proved to be for this reason. The evaluation report was issued and in fact Mr. Simmons resigned and then he was hired by a new organization called the
National College for Criminal Defense which actually had been called the National College for Public Defenders and Criminal Defense Lawyers. They promptly hired him. This had tremendous implications for NLADA because when he was hired by that agency he was angry at NLADA and that caused some problems in the future. In any event all our evaluations were straight arrow. We tried to improve services to clients but there was a price when we recommended that public defenders be fired or be asked to resign or transferred to different departments that caused some ill feeling among people who were friends of theirs and other public defenders. On the other hand our reputation as doing a fair job was in tact and pretty much the public defenders who went in to do these evaluations were very well known and very well respected in the field and we never used a person from the jurisdiction to be on the team. So there never was any question about impartiality.

Let me describe now some of the grants that we acquired from LEAA during this period. Remember I’m talking about 1970 to 1976. I said in our first discussion that the first thing I did when I got to the national office was to request a grant a base line grant to do a national defender survey so that we could find out what was out in the field. How many offices were there, where they were, what their caseload was, what their staffing was, etc. and
their organization. That was done and then we started a series of other
grants. One of the major grants was for a national training facility for public
defenders. I had said to you in our first discussion that I was very
dissatisfied with the training I had received in the Cook County Public
Defender’s Office, training was just totally nonexistent. And yet I
recognized that no one at the office had time. It wasn’t that they didn’t have
the knowledge, but no one had the time to conduct a proper orientation for
new public defenders. And so my first goal when I went to the national
office, apart from getting a base line survey done was to fly to Washington
within two weeks of my becoming national director and meet with Tom
Lombard who then worked for the new organization called LEAA, Law
Enforcement Assistance Administration. And he took me to his home and
gave me dinner at his home which was very nice and I told him of my dream
of a national defender college, which would then train young public
defenders as they were hired. And training which none of the offices really
except for the huge offices perhaps like New York or Washington, D.C.,
could really do. And he told me at that time he was dissatisfied with the
prosecutors’ college because for a variety of reasons. But as we talked and I
told him how we would be different from the prosecutor’s college which
itself was changing anyway after the first year of just flying in and flying out
speakers every hour. They set up more of a permanent faculty. But I talked to him about that and he then agreed that he would back the idea of a national defender college. Now thereafter there was a meeting in San Juan, Puerto Rico between the ABA Criminal Justice Council and NACDL, the National Association Criminal Defense Lawyers. And those two groups were meeting and talking about a national college for criminal defense. I sent Mary Ellen Dienes who was then my deputy to that meeting. And when she came back from the meeting telling me that they were also moving in the direction of a national college I thought it was important for NLADA to file. So we filed a grant application first with LEAA which put us in the driver’s seat. Thereafter came a long period of negotiations with the American Bar Association Criminal Justice Committee and with NACDL where they wanted to join our grant and during this period I was not accessible to them. They tried to meet with me and in all fairness they tried to get me to come to their meeting. I never went. I sent Mary Ellen Dienes, I sent Pat Maxwell who was on our staff, I sent Nancy Goldberg once and none of them knew what I was doing with the college so that all questions to them were fruitless. You might ask why I did this but I was afraid that unless we actually had the grant in our hands that we would lose control of the college and I thought that was important for defenders to control that college and its direction.
Finally a meeting was set up with John Robb, who was then chairman of the Standing Committee on Legal Aid and Indigent Defenders, strike that, ABA Standing Committee on Legal Aid and Indigent Defendants, a person of unquestioned integrity and deserving of the highest respect. And John Robb brokered an agreement that we would meet, NLADA would meet with representatives of the ABA Criminal Justice Council and representatives of NACDL and we would all three groups work together to have a joint college. With John Robb’s assurances I was no longer afraid. Frank Jones and I went to such a meeting and we had several meetings where we tried to work out an agreed upon course of action with all three groups working on it. The American Bar Association that is, NLADA and NACDL. Arnie Scholer was then the person who was dealing with us. Ted Lombard had left the scene, Arnie Scholer was now the person dealing with us from LEAA. At some point when we had some difficulties with NACDL Scholer announced he would not give anybody the grant unless we all got together. The name of the college was then called the National Defender College. And it was oriented towards defenders and those people, appointed lawyers who handled indigent cases. The NACDL’s approach in my view was that they wanted the college for private criminal defense lawyers. The ABA was kind of a broker, they were in the middle except that the people on the
Criminal Justice Council of the ABA were people who were related to NACDL either the same people or friends of theirs. The final compromise that we worked out and Frank Jones was then executive director of NLADA, was very involved in this personally and very fearful that we would lose control of the board and he was prophetic in his fear and the final compromise was that two members of the standing committee would be appointed by ABA or people selected by the standing committee, two members of the Criminal Justice Council were selected by the Council would be appointed by the ABA, then four from NLADA and four from NACDL. Our view was that the two from the standing committee of ABA would side with and be sympathetic to the indigent defenders and therefore we felt it would be a three-six-six on the votes and the college would then proceed to what it ought to be doing which was educating people and not worrying about internal politics. However, a day of infamy occurred when we had a final meeting with NACDL at this meeting they changed the name of the college, all the ABA appointees came from the Criminal Justice Council or their friends, they removed me as project director, I was the project director for NLADA to ensure that defenders were involved, installed a person whose named was Anthony Friloux, to be the project director, changed the name of the college to National College of Criminal
Defense and Public Defenders which was kind of a compromise which I worked out and in general when I talked to some of the people from NACDL like Paul Smith and Morris Schenker and told them we had agreements through the ABA that we would agree on everything we would reach consensus and the direction of the college would be towards appointed lawyers who handled indigent cases and public defenders, they laughed and just said too bad they weren’t about to honor any such agreements. And so the grant was given to this new joint group. The college was placed in Houston, Texas adjoining the prosecutor’s college, a move which I didn’t oppose by the way it was logical to put it near the prosecutor’s college under the theory they would share some facilities and some equipment and even some speakers. Although my ultimate goal was to move the college to Nevada where I thought there was more foundation money like Fleischman Foundation and other places that we thought might be interested in funding the college long term and that is where the national judges college is so. In any event then there was a period of several years of total warfare. The votes were usually 8-4 with all the ABA people lining up with NACDL people opposed to defender votes.

Now what were the issues that divided us? Well, one issue was who would be the dean of the college. For example the NACDL people headed
by Paul Smith wanted to have as dean of this defender college, I call it defender college, it was criminal defense college, they wanted to have a person whose name was Friloux, a former governor of Massachusetts who had either been defeated or resigned from the governorship and who to my knowledge had never been involved in public defender work and in fact probably although he was a lawyer had never really done any heavy criminal defense work but they thought he was a politician. I opposed that and all the NLADA delegates to the board opposed that as well. They were going to put Friloux in, they had the votes. I met with our LEAA advisor at that point was James Swain, I told him my concerns and he told me this. Unless you agree that is NLADA agrees, Marshall, not one cent will go to the college. We’ll stop the funding. So at the next meeting of the college when they explained they had the votes to do whatever they wanted, I simply said one line. I said unless we agree on a dean and it’s a consensus between NLADA and everybody else you’ll never get another penny of LEAA funds. I said that because I had just checked with LEAA. For some reason this angered the delegates from ABA and NACDL and however when they checked they found that was the case and so at the next meeting they finally agreed on a compromise candidate who actually had been a contract defender in Wyoming and was acceptable, John Ackerman was his name, was
acceptable to everyone. He wasn’t my first choice because Ackerman was not a major defender but I didn’t feel in good conscience I could oppose a person who actually was a criminal lawyer and who had actually been a contract defender as compared with a Friloux who had been a governor and really had never been in the field. And I think Ackerman did a credible job. The first choice of everyone oddly enough was Addison Bowman who had set up the training program in Washington, D.C. and who would been a total consensus candidate, everyone would have agreed with him except that unfortunately I sent Addison Bowman to a seminar in Hawaii to help teach evidence at a seminar and when he got there he got a job at the University of Hawaii and he never came back from Hawaii. And I called him, I said you know you are our consensus candidate to be dean. He said Marshall whatever you want I’ll do for you but I’m not moving out of Hawaii to Texas. So it was a lost opportunity. But other candidates who applied made several errors. One candidate whose name was Mel Lewis who later became deputy dean of the college, explained that he was a friend of mine, that finished him off and I think it wasn’t me personally it was the fear that NLADA would try to dominate the college. Later some of the board members from NACDL tried to tell the new executive director, James Flug, that the problem with the college board was a matter of personality, that I
Marshall Hartman was such a bad guy that they couldn’t get along with me, if there were people more reasonable on the board then things would be all different. And Jim Flug I think accepted that for a very short time a month or two but after coming to one or two meetings he was then threatened by these people in the sense that when he raised concerns which he thought were legitimate to NLADA they tried to outvote him and they even told me I think he was told at one point by somebody that to remember he had to come back and practice law in Boston. So he soon realized it was not a matter of personality it was a matter of conscience. Now I don’t want to condemn the entire NACDL that would be unfair. For example Jim Shallow who was at one point the president of NACDL was a close friend of mine and in fact people like Jim Shallow who I thought represented NACDL were people that I wanted to have a part of the college. Jim Shallow, who was one of the outstanding criminal defense lawyers in America, used to speak free for NLADA at training seminars and he and I traveled the circuit together and in 1968 when NLADA had, this was before I came to work for NLADA, but that’s how they found me, they had a training grant and Pat Hughes administered it with Joseph Jarofsky, his assistant, and we went around the country, I spoke about the Supreme Court in those days, Shallow talked about chemistry, etc. However it wasn’t Jim Shallow I was dealing with
from NACDL it was other people elected to this college board and people that I didn’t know and who I think lacked the vision and sympathy for the defender movement that Jim Shallow had, and so I had to deal with people like Anthony Friloux, Paul Smith and Morris Schenker. There were other people on the committee, especially from the ABA like Livingston Hall who always tried to steer a middle road and tried to work things out between NLADA and NACDL and I want to praise him for those efforts. He did try to get us to compromise and meet. And there were other people too who I’m not naming now who tried to be more reasonable but it was a long battle. Finally at some point in the proceedings about 1975 or so I left the board and other people continued the work. Ultimately I think Frank Jones proved prophetic in his concerns. I say there were other concerns besides the dean, concerns about the curriculum, concerns where scholarships should go, whether they should go to private bar people or public defenders, those were all critical issues. Finally NACDL ran the college. It went bankrupt and I’ll leave for future historians to explain what occurred but the ultimate result was that the college was reconstituted in a new form and run totally by NACDL who now runs the college and NLADA contributes money to it still but has no voice on the board whatsoever nor does ABA and I do know that some people from the American Bar Association were unhappy that they
were excluded from the new construct of the college, etc. The NACDL people claimed that they saved it from bankruptcy and reconstituted it but the real question was whether they ran it into the ground in the first place. They were very resistant to having us audit them, etc. In any event, that’s history. Today I must say that the college is alive, a lot of defenders go to it, a lot of the old wounds are forgotten. I myself am now the Lake County public defender in Illinois, I sent people every year to the college, they come back enthusiastic with the training. And the final ultimate irony of all this is that most of the people who attend the college are public defenders and the instructors are public defenders and private bar lawyers. And although NACDL is running it I think it’s for the benefit of NLADA membership, so somehow the final result justified those early years.

**JN:** So the other major grant at that point that had a significant impact other than the fact that LEAA programs were being funded, created and coming into existence around the country was the National Center for Defense Management.

**MH:** Okay. I had talked earlier in our last discussion about the efforts of American University and Joseph Trotter in doing some technical assistance with defenders. Based on that experience I believe that we needed an in-house facility which we utilized not just random public defenders as
consultants but would have a in-house experienced staff of its own that could do technical assistance in addition to utilizing some public defenders from around the country as consultants. Part of my thinking was that people who are public defenders were busy otherwise and when they went out in the field to do technical assistance programs and projects there was a lot of time needed to write up reports, people didn’t have this time. So we filed a grant with LEAA for a National Center for Defense Management. We used as a model what the prosecutors had. They had a national center for prosecutors, I don’t remember the exact name of it but it was something like that. And LEAA did agree to fund us and Bill Higham became the director of this project with several staff members and it was successful in my mind in providing a continuing technical assistance capability to NLADA and allowing the staff, there were three people on the staff plus clerical people, two lawyers and one management type person, Pers Eisley I think his name was something like that. Eaton right Presley Eaton, he was a retired colonel but he was a management person. And as I said Bill Higham was the director and they had another staff lawyer. And they went out and did a number of technical assistance projects and they were available for phone calls and technical assistance and they began to develop some manuals on technical assistance and some other work. Unfortunately LEAA was always
plagued with notions of quantity and they seemed concerned that the
National Center for Defense Management had not responded to enough
projects. Now there were two theories involved and I’ll try to do them
briefly that LEAA about technical assistance. One theory was the Trotter
theory which was two or three days of technical assistance per project in
terms of a field trip, writing a report, quick get in and get out and provide
this kind of advice. And it was helpful in a number of areas. The other
theory was that to do good technical assistance you had to spend a little
more time in a jurisdiction, actually not tell them what had to be done but
show them how to do it and for that you need to have somebody in place for
a week two weeks, three weeks whatever. Bill Higham subscribed to the
latter theory, he wanted to spend more time in various projects and not just
rush in and rush out and he thought that was the role of an in-house
capability and that worked for a while until the people at LEAA who
believed in the first theory of a number of quick projects prevailed and they
defunded the National Center for Defense Management. It went up for bid
and then Apt Associates spearheaded by Robert Spangenberg got the grant
and they continue on with technical assistance for a while. But while it
existed it was an important capability for NLADA and I think whether Apt
did it with Spangenberg or Bill Higham or Joe tried to continue to get us some projects it was needed all through the field and provided a real spark.

**JN**: One of the legacies of the National Center wasn’t just that it went out to programs and told them how to do the job the better, I mean they still confronted, they had to get the money to make the improvements or the people turned over locally and perhaps the reports were invaluable or maybe . . . there was another factor as equally as valuable and that was it took more defenders in a single year, brought them together, trained them and put them out in the field and I think everybody who did it felt they brought more back from it including themselves as much as what they left where they had been.

**MH**: Absolutely. In fact when I myself used to go out on these field trips I would learn immensely and one of the things I said to people later when I would go from jurisdiction to jurisdiction was I felt like Johnny Appleseed, not that I knew so much, I didn’t know anything but I learned from one jurisdiction to another and I carried to jurisdiction B what I had learned from jurisdiction A

**JN**: It was . . . more than you

**MH**: No now they had a whole cadre but

**JN**: . . . if you look at the leadership across the country in a variety of areas not just in the defender movement
MH: Absolutely.

JN: I think the evolution of an awful lot of leadership in bar associations came out of the people who went through that process.

MH: You’re absolutely correct. What I’m saying instead of just me there was a whole cadre of people doing it and for example in Ohio they put on such a training program of management training and they did a lot of other projects. A third grant was an evaluation design grant and I think in our first hour I pointed out that we did five evaluations very quickly when I first got to NLADA and four out of the five evaluations resulted in either the resignation of the public defenders or change in status or termination. And one had a heart attack. I thought it was important to have a solid design. We asked for a grant from LEAA to produce a self-evaluation checklist for offices to use by themselves and for a solid defender evaluation design. We received a grant, we hired Dr. Roberta Rovner Pieczenik,

JN: One of the great names in all lyrical names in all of the movement.

MH: Dr. Pieczenik was an expert in evaluation design. She did the design for the police department, she had a Ph.D. in political science I think her field was evaluation and she then with a staff over a period of a year produced a very solid evaluation design which explained exactly the
procedures to be followed, incorporated the standards which NLADA were passing which I’m going to get to next, and actually provided two services. Service one was that any office that was going to be evaluated could now read the booklet and see what they were going to be evaluated on and what standards were going to be used. And number two it provided a little self-evaluation checklist for any office to do its own internal evaluation even if a full blown evaluation wasn’t done. Now one important point I want to make here is that although she did all the work in this both Nancy Goldberg and myself, Nancy was then deputy director of NLADA, tried to monitor her project and one of the things we insisted on was that the standards she used be not standards that the project made up but the standards that were passed by NLADA and by the National Advisory Commission.

**JN:** Excuse me, Nancy was deputy director of NLADA you mean of the defender division.

**MH:** Right. Thank you. Well in my mind we were in NLADA. When I started there was myself and a secretary and by the time of our heyday of about 1974 or ‘75 we had 18 people on the defender side alone. So it was a big growth on the defender side and most of it was due to grants and because of needs. The field was exploding due to Argersinger, due to delayed reactions to Gideon, due to tremendous needs. After all when Argersinger
came down we had a potential client population base of five million. That was a lot of people to be served and so obviously programs exploded all over the country and communities wanted to know how to deal with the Gideon and Argersinger decisions, they now had to provide counsel for both felony and misdemeanor cases. With Gault and juvenile cases, etc. Anyway this evaluation design grant was very successful I thought and even after NLADA completed that design, NLADA used it, the National Center for Defense Management used it and National Defender Institute which was a later non-membership not-for-profit organization doing technical assistance used it and it was a model in general to be used by other groups.

I want to talk about the standards grant because that was our next major grant. Earlier in our last discussion I mentioned the fact that NLADA drafted defender standards for the National Advisory Commission on Criminal Justice Standards and Goals. The Commission was designed to set standards and goals for the use of LEAA funds. However, if you recall from my last discussion we were given a mere two days to do the outline of these standards and then 30 days to do the drafting. And the standards were of enormous impact. And Nancy Goldberg, whose idea this was, felt that that was too quick to have standards which would have this kind of impact on the field and it was her idea to design a project which would include a research
component and I wanted to have a big conference. So we combined ideas and we then went to try to negotiate this grant to the highest avenues of the Justice Department with Kleindienst who was then the Attorney General and Bill Klaus of NLADA was the person who talked to Kleindienst for us. And he convinced Kleindienst to tell LEAA to give us $400,000 for such a purpose on the theory that the Attorney General had a duty not only to the prosecution of this country but to the defense component as well. And I want to give Bill Klaus credit for doing that. Kleindienst evidently must have sent a letter or something but whatever it is

**JN:** Excuse me Bill Klaus was a private lawyer who later became president of LEAA board of directors in private practice in Philadelphia.

**MH:** Right. And he wasn’t even president when he negotiated this but he was on his way up to being president. And he performed a very valuable service in doing this and Betty Kehrer also was involved in this area and she assisted, she was on the civil side. In any event the money was given and a national study commission was established and the president of NLADA on Nancy Goldberg’s recommendation then appointed some 35 commissioners from all over the country to be on this commission. And the criteria was not any political clout, it was brain power, knowledge of defender systems and scholarship. And among the people that were selected by the president of
NLADA were Sheldon Portman who was named chairman of the commission, who was an outstanding defender from Santa Clara, California, James Neuhard who was then the state appellate defender of Michigan was selected as secretary, the person who is now interviewing me, and other people some of whom were not lawyers but were outstanding scholars. For example, Al Blumstein of Carnegie Mellon, was a non-lawyer but who knew about systems, was selected to be on the commission.

JN: I think he is considered to be one of the current experts in the law of sentencing and the consequences of sentencing in America

MH: Absolutely, he has an outstanding reputation. And without going through the list of other 30 commissioners they were all outstanding people. One commissioner just to give you an idea of who was on there was John Van de kamp who became the attorney general of California and just recently ran for governor.

JN: I remember I think it was Oliphant from Minnesota who was basically one of the driving forces behind the . . . of education which was the backbone of what became the criminal defense . . .

MH: Raymond Nimmer who now a professor at Cal Western who worked at NLADA for a while as national director and numerous people who were just outstanding people. In fact some of the great meetings of the
commissions, it was divided into six task forces, some of the meetings were just outstanding meetings and I attended all the task force meetings, I was advisor to the commission but Nancy Goldberg was the director and she had a staff and they provided 21 volumes of materials to the commissioners who were divided into these task forces and each commissioner was required to write a report which they did. Each one wrote a paper which were then compiled and put into a book which is called Guidelines to Legal Defense Systems in the United States, a book which has been distributed to everybody at LEAA and which is still extant it’s still used by people who setting up new systems. It was a tremendous work and the important thing was that what they did was to look at the NAC standards and then assess whether they were valid, not valid, should be changed, what additional standards should be made and in fact they went off on their own you know with the NAC standards as a base but were not restricted by them. They could develop what had to be done and so two great things came out of this project I think. One was a book which is still here available for people to read about the various problems defenders face and Nancy edited all the papers and put it into a book form. Second of all by the discussions themselves many defenders began to be aware and their consciousness was
raised as to issues which related to defenders. Issues of eligibility, I’m not
going to go through the whole list but issues of use of paralegals, all

JN: All the issues of today was brought up in that meeting.

MH: And also the material were widely distributed to the centers all
over the country and in 1976 a colloquium was held in Washington, D.C.
attended by some 400 people which included some chief judges of states,
some prosecutors, Congressman Rodino spoke, I think Sam Dash spoke and
it was an event which was to herald a milestone, was funded by LEAA the
whole conference, everything was paid for by LEAA out of this grant but
suddenly it was the focus of defender issues and suddenly we were on the
front burner and defenders felt proud they were going to be involved in this,
that people cared about what happened to defenders, plus they had a chance
to revisit those NAC standards which were done so hurriedly and what was
produced then was standards of the national study commission which to this
day, today we attended a meeting about evaluations of legal service and
defender offices and in a list of the standards which should be looked at by
evaluators there sit the standards of the National Study Commission on
Defense Services which are recorded in the book Guidelines to Legal
Defense Systems in the U.S. So a lot of defender were involved in it and it
was an activity which NLADA was involved in. So during those years there
was a ferment of activity of NLADA because simultaneously during these five years or so evaluations were happening all the time, technical assistance projects were happening all the time in which defenders from all over the country were being used going back and forth, people from the south going north and west to east and conversely. The staff of NLADA told me they had never seen such activity, it was always busy in our offices, I was on the phone 10 hours a day and we were always meeting on weekends somewhere. Research was going on, another grant that we just mentioned briefly that we got from LEAA was called IDSA, Indigent Defense Systems Analysis headed up by Shelvin Singer and Beth Lynch who teamed up to do the research on this grant and they looked into various questions researching the questions such as impact of plea bargaining on the system, impact of cost of different systems, and speed of disposition as it affected different systems, etc. So we were doing research, technical assistance, evaluations, setting up new systems, etc. I might just add one stylistic thing which this is a little humor because I’ve been pretty serious all this time. I was noted for not being a great answerer of letters, in fact after this was all over Frank Jones met with Junius Allison once they were both executive directors of NLADA for whom I worked and Frank Jones told Junius that he received a letter from me and Junius marveled because I really never answered a lot of letters
but the reason I had that view was that before I came to NLADA they always answered every letter, a letter would come in saying we need materials on setting up a public defender system and they would mail something out to them, some booklet. I never did that. Every time a letter came in I responded with a phone call. I offered to send a team down there to help them set up a system and then I got financing from somebody, either Joseph Trotter at American University or from LEAA or from National Institute of Justice or somebody to help fund some kind of technical assistance study. So that every time there was a phone call inquiring about the possibility of a defender system we responded with a person or some kind of plan and one of the things we did during those years was make a number of feasibility plans and studies, sometimes through the National Center for Defense Management but we would provide jurisdictions like Ohio, for example, with a feasibility study on how much it would cost to set up a system, how much it would cost to have an appointed counsel system, how much it would cost to maintain their present system using national standards. So that is a kind of quick summary of those NLADA years.

**JN:** There was one person you mentioned several times Jim Flug do you have any comments about the Flug years the battles and
MH: Well Jim Flug was a person who I think performed some valuable services for NLADA. He was appointed to be executive director after Frank Jones. The order was for me, Junius Allison was there prior to 1970 and he hired me in October 1970 and then Frank Jones came on shortly thereafter within a month or two and Junius was gone although he was a pervading presence there. Then after Frank Jones left about ‘74 or so to become vice dean of the law school, they hired James Flug who had been chief counsel for Ted Kennedy. Flug did an excellent job on the Hill in terms of lobbying. He also helped us get some of those grants. We developed the grants, we worked them out but he had some connections and that didn’t hurt and he pushed for those grants and he backed us, he backed the defender side all the way in getting all of those grants. And he did a magnificent job on the Hill. Now unfortunately from my perspective they hired him to be the chief executive officer of the corporation as well as chief lobbyist. As a lobbyist I think he is without peer. I mean I went with him to some events, people from the Russian embassy knew him, they would nod to him, he knew everybody in Washington and he was great. But there was no way he could be on the Hill all day long as he was often and then come back to do the myriad of paperwork necessary for an executive director.
**JN:** Let me stop you for a second. You were in Chicago and Jim Flug was in Washington, there was this period when NLADA was moving from a Chicago base to a Washington base. When did the civil office open in Washington was that contemporaneous with the hiring of Jim Flug?

**MH:** Yes I think so. Just about. Yeah the civil side, I didn’t mention that really. We were in Chicago at the American Bar Center but there were some feeling especially when Flug got to be executive director that they needed to have a Washington-based office.

**JN:** Also there was some big push to create the Legal Services Corporation

**MH:** Yeah it may have started just before Flug but he advanced it and the idea was they needed to be near the Hill, they needed to be near the Legal Services Corporation and the compromise was that the defender side would stay in Chicago at the ABA, I headed that office at that point in the Chicago office and the Washington office of civil would be there near the Hill. Now when we got the grants Flug asked me let he wanted to have the National Center for Defense Management in Washington and that caused some tension between Flug and myself because I felt they should all be with me in Chicago where I could supervise them. But you know I had no choice, I gave in and I ended up doing some commuting between Chicago
and Washington. But actually Flug and I got along very well. He got into some battle on the civil side which I don’t want to take time to describe now because I don’t really know why they got into a battle but somehow the civil side was embattled and it was at a time when it was the most critical for defenders. The defender community was united at that point. We had a million dollars worth of LEAA grants, we had 18 staff people on the defender side and my name was on all those grants as the responsible person and I had an obligation to LEAA, I had an obligation to the defender community, and to the clients we ultimately served to make sure that those grants were successful. Otherwise we would never get another plus we would lose an opportunity we had spent two or three years building up to. Some people tried to draw me into this battle for or against Flug and I simply said I stand with God, I would take no sides in it and I refuse to be drawn into it. And I remember one meeting John Van de kamp was on the board of NLADA then, they asked me my opinion of Flug and Van de kamp said wait I’m Marshall’s counsel, I advised him, let me talk to him, he advised me to keep quiet. I said I agree 100 percent, I refuse to comment. Some people were mad at me for not saying that Flug was a bad administrator or a poor administrator. The truth was he was an excellent lobbyist and I refuse to let the defender side be drawn into it. So to that
extent that was a summary of the Flug years for me except that when he stepped off, and I guess I should mention this before I sum up the NLADA years, when he stepped off as executive director I was named to be the acting executive director of NLADA and it was at a meeting in Seattle, an annual conference in Seattle, I appeared before the board of directors with some other candidates, a couple of other candidates withdrew when my name was put in, defenders, . . . which was nice of them, Brook Hart did that he had been a commissioner on the study commission from Hawaii, and the board named as acting director and then there was going to be a battle and I’ll mention this now to conclude this part. There was going to be a battle at NLADA because the question was whether I was going to try to be the permanent executive director. I was ready to do it I had been frustrated by some of the things that I had agreed with Flug but then the view was they were going to bring back Frank Jones as executive director. Frank had trained me, some of the support I had on the civil side were people who knew me through Frank and I felt that to avoid an . . . warfare I would simply step off, agree to withdraw for a position of permanent executive director and that way the organization would be united. Some members of the defender committee had urged me now to fight Frank and to be executive director and I felt in the long run it would not enure to anybody’s benefit. So
it was an agreed upon deal. I became acting executive director for about five months because Frank was still at a law school, he was in a kind of supervisory committee and I was elected acting executive director in Seattle, just before Seattle I was named director. I served till about February of 1976 which allowed us to have our colloquium with me as executive director which is something I wanted to get done and then Frank came back to be the executive director.

**JN:** So you traveled to Washington during that five-month period.

**MH:** Oh during that period on Monday morning I flew to Washington, Friday night I flew back home said hello to my wife and kid and Saturday and Sunday I would be at some meeting in Denver or some other place. And during that period I pretty much ran the defender side too. Nancy Goldberg was acting director of defender services then but on the civil side we hired some consultants and I had agreed not to tamper with the civil side because I really wasn’t an expert on the civil side and I kind of let the civil committee run things, tried to work with Peg and tried to, I did attend some meetings of the Legal Services Corporation.

**JN:** Did anybody in Washington particularly nice to you?

**MH:** One staff member whose name was Linda was actually very nice, actually I guess I should comment for a second about this. The
Washington staff was in turmoil when I got there. They had all been fighting with Jim Flug. I don’t want to take sides as to who was right or who was wrong but the fact was they were all battling with Jim Flug, there was a very poor morale problem and I came in and I said look I don’t have that kind of morale problem in Chicago I’m here to work with everybody. I had a meeting and the first meeting I had was in the executive director’s office I think the mail clerk I had him sit in Flug’s chair, I sat on the floor somewhere and we tried to work out some of the problems. And it took a little while but it was very helpful to have the support of some of the staff, people I had known from before in Chicago who had now moved to Washington including Linda and a person’s name is now Linda Neuhard

**JN:** Linda Durand

**MH:** She was Linda Durand then she’s still Linda Durand but it was exceptional because when I first got there they said here is this defender from Chicago and people were not really accepting but anyway I turned the staff around I think and convinced them I was there to work, I was one of them and we were all going to work together and Linda Durand Neuhard was very helpful and very nice. I’ll never forget that.
**JN:** Before we move on to another topic and wrap up, this is wrap-up of the NLADA days, and we’ll talk about the National . . . CDC  [END OF RECORDING]